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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

-v-

Yuri Lebedev, Trevon Gross,

Defendants.

15-cr-769 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

Attached to this order are (1) a copy of the Court's proposed final jury instructions; (2) a red-line showing minor changes made to the Court's instructions that the parties have not yet reviewed; and (3) a copy of the final verdict form.

Parties are ordered to submit any objections to specific changes the Court has made to these documents by 8:30 p.m. tonight, March 8, 2017.

Additionally, the Court reminds counsel that they should promptly meet and confer over the exact materials that will go back to the jury room during deliberations. The Court will seek to confirm such agreement on the record tomorrow morning, March 9, 2017.

SO ORDERED

Dated: March 8, 2017
New York, New York

ALISON J. NATHAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA

- v. -

YURI LEBEDEV and
TREVON GROSS,

Defendants.

- x

S6 15 Cr. 769 (AJN)

JURY INSTRUCTIONS

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INTRODUCTORY INSTRUCTIONS

Instruction No. 1: Role of the Court

You have now heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties. It is my duty at this point to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

On these legal matters, you must take the law as I give it to you. Regardless of any opinion that you may have as to what the law may be—or ought to be—it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you. If an attorney or anyone else at trial has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room. You may take a copy of these instructions with you into the jury room.

Instruction No. 2: Role of the Jury

Your role is to decide the fact issues that are in the case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence or lack of evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the testimony; and you draw whatever reasonable inferences you decide to draw solely based on the evidence and from the facts as you have determined them. You must determine the facts based solely on the evidence received in this trial.

In determining the facts, you must rely upon your own recollections of the evidence. What the lawyers have said – for instance, in opening statements, in closing arguments, in objections, or in questions – is not evidence. You should bear in mind particularly that questions put to witnesses, although they can provide the context to answers, are not themselves evidence. It is only the answers that are evidence.

I remind you also that nothing I have said during the trial or will say during these instructions is evidence. Similarly, the rulings I have made during the trial are not any indication of my views of what your decision should be.

The evidence before you consists of the answers given by witnesses, the exhibits, and the stipulations that were received in evidence. If I have sustained an objection to a question or told you to disregard testimony, the answers given by a witness are no longer part of the evidence in this case and may not be considered by you.

Instruction No. 3: Statements of Counsel and Court Not Evidence;
Jury's Recollection Controls

As I have said, you must determine the facts by relying upon your own recollection of the evidence. This case is not to be decided on the rhetoric of either the attorneys for the Government or the attorneys for the Defendants. The lawyers' arguments are intended to convince you to draw certain conclusions from the evidence or lack of evidence. Those arguments are important. You should weigh and evaluate them carefully. But you must not confuse them with the evidence. If your recollection of the evidence differs from the statements of the lawyers, follow your recollection.

You should draw no inference or conclusion for or against any party by reason of lawyers making objections or my rulings on such objections. Counsel have not only the right but the duty to make legal objections that they think are appropriate. You should not be swayed against the Government or either Defendant simply because counsel for either side has chosen to make an objection. Similarly, statements made by counsel when arguing the admissibility of evidence are not to be considered as evidence.

If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. Again, it is your recollection that governs.

Do not concern yourself with what was said at side bar conferences or during my discussions with counsel. Those discussions related to rulings of law, which are my duty, and not to matters of fact, which are your duty to determine.

At times I may have admonished a witness or directed a witness to be responsive to questions, to keep his or her voice up, or to repeat an answer. My instructions were intended only to clarify the presentation of evidence. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or party in the case, by reason of any comment, question, or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

Instruction No. 4: Improper Considerations

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider any personal feelings you have about the Defendants' race, ethnicity, religion, national origin, sex, age, or other similar factor. Similarly it would be improper for you to consider any personal feelings you may have about the race, ethnicity, religion, national origin, sex, age, or any other similar factor of any other witness or anyone else involved in this case. It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. The Defendant is entitled to a trial free from prejudice and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

Instruction No. 5: All Parties Are Equal Before the Law

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that given to any other party to this litigation. By the same token, the Government is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Instruction No. 6: Presumption of Innocence and Burden of Proof

Yuri Lebedev and Trevon Gross have each pleaded not guilty to the charges against them. As a result of a plea of not guilty, the burden is on the Government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of testifying, or calling any witness, or locating or producing any evidence.

Even if either Defendant has presented evidence in his defense, it is not his burden to prove himself innocent. It is always the Government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt.

Furthermore, the law presumes the Defendants to be innocent of the charges against them. This presumption was with them when the trial began and remains with each of them as you deliberate unless and until you are convinced that the Government has proven that specific Defendant's guilt beyond a reasonable doubt.

Instruction No. 7: Reasonable Doubt

I have said that in order to convict either of the Defendants on any of the charges in the Indictment, the Government is required to prove that charge as to that Defendant beyond a reasonable doubt. The question that naturally arises is, "What is a reasonable doubt?" The words almost define themselves. It is a doubt based in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all of the evidence in the case.

Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, and your common sense. If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you do have an abiding belief of either Defendant's guilt as to any crime charged in this case, such a belief as a prudent person would be willing to act upon in important matters in the personal affairs of his or her own life, then you have no reasonable doubt, and under such circumstances it is your duty to convict that Defendant of the particular crime in question.

On the other hand, if, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied with the guilt of either Defendant as to any charge, that you do not have an abiding belief of that Defendant's guilt as to that charge – in other words, if you have such a doubt as would reasonably cause a prudent person to hesitate in acting in matters of importance in his or her own affairs – then you have a reasonable doubt, and in that circumstance it is your duty to acquit that Defendant of that charge.

One final word on this subject: Reasonable doubt is not whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. Nor is it sympathy for either of the

Defendants. The law does not require that the Government prove guilt beyond all possible doubt: proof beyond a reasonable doubt is sufficient to convict.

Instruction No. 8: The Indictment

The Defendants, Yuri Lebedev and Trevon Gross, have been formally charged in what is called an "Indictment." As I instructed you at the outset of this trial, the Indictment is simply a charge or accusation. It is not evidence. Each Defendant begins trial with an absolutely clean slate and without any evidence against him. You must give no weight to the fact that an Indictment has been returned against the Defendants. What matters is the evidence that has been presented at the trial and the lack of evidence.

I will next summarize the charges in the Indictment and then explain in detail the elements of each offense.

CHARGE

Instruction No. 9: Summary of the Indictment

The Defendants, Yuri Lebedev and Trevon Gross, are charged in a six-count Indictment, although both Defendants are not charged in every count. You will have a copy of the Indictment with you in the jury room and can read each count in its entirety. I am going to provide only a brief summary now:

Count One charges Yuri Lebedev and Trevon Gross with conspiracy. The conspiracy charged in Count One has four objects or goals that are described in the Indictment.

Count Two charges Yuri Lebedev with making and attempting to make corrupt payments with the intent to influence an officer of a financial institution.

Count Three charges Trevon Gross with accepting corrupt payments as an officer of a financial institution with the intent to be influenced.

Count Four charges Yuri Lebedev with conspiracy to commit wire fraud and bank fraud.

Count Five charges Yuri Lebedev with wire fraud.

Count Six charges Yuri Lebedev with bank fraud.

Instruction No. 10: Consider Each Defendant Separately

The Indictment names as Defendants Yuri Lebedev and Trevon Gross, who are on trial together. In reaching a verdict, however, you must bear in mind that guilt is individual. Your verdict as to each Defendant must be determined separately with respect to him solely on the evidence, or lack of evidence, presented against him without regard to the guilt or innocence of anyone else. Whether you find a particular Defendant guilty or not guilty as to one offense should have no bearing on your verdict as to the other offenses charged.

In addition, some of the evidence in this case was limited to one Defendant. Let me emphasize that any evidence admitted solely against one Defendant may be considered only as against that Defendant and may not in any respect enter into your deliberations as to the other Defendant.

Instruction No. 11: Multiple Counts, Multiple Defendants

As I mentioned, the Indictment contains six counts and charges two Defendants. Both Defendants are not named in every count.

You must, as a matter of law, consider each count of the Indictment and each Defendant's involvement in that count separately. You must return a separate verdict on each Defendant for each count in which he is charged.

In reaching your verdict, bear in mind again that guilt is personal and individual. Your verdict of guilty or not guilty must be based solely upon the evidence about each Defendant. The case against each Defendant, on each count in which he is charged, stands or falls upon the proof or lack of proof against that Defendant alone, and your verdict as to any Defendant on any count should not control your decision as to any other Defendant or any other count.

Instruction No. 12: Counts One through Three: Overview

I will now instruct you on the elements of the crimes with which the Defendants are charged in the Indictment. I will first instruct you on the elements of the corrupt payment offenses charged in Counts Two and Three, which are two of the objects, or goals, of the conspiracy offense charged in Count One. I will then instruct you on the elements of conspiracy.

Instruction No. 13: Count Two: Making Corrupt Payments to an Officer of a Financial Institution

Count Two charges Yuri Lebedev with making or offering to make corrupt payments to an officer of a financial institution, specifically the Defendant Trevon Gross, with the intent to influence him in connection with the business of a financial institution, specifically HOPE Federal Credit Union. In order to find Yuri Lebedev guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First, that Trevon Gross was an officer or director or employee of a financial institution as that term is defined under federal law;

Second, that the Defendant gave or agreed to give or offered or promised something of value to Trevon Gross;

Third, that the Defendant acted corruptly and with the intent to influence or reward Trevon Gross's decision in connection with any business or transaction of HOPE Federal Credit Union; and

Fourth, that the thing of value paid by the Defendant had a value greater than $1,000.

Instruction No. 14: Count Two, First Element: Recipient Was an Officer of a Financial Institution

The first element the Government must prove beyond a reasonable doubt is that, at the time of the events alleged in the Indictment, Trevon Gross was an officer or director or employee of a financial institution. In order to satisfy this element, the Government must prove that HOPE Federal Credit Union was a credit union with accounts insured by the National Credit Union Share Insurance Fund, and that Trevon Gross was an officer or director or employee of HOPE Federal Credit Union.

Instruction No. 15: Count Two, Second Element: Giving Something of Value

The second element the Government must prove beyond a reasonable doubt is that Yuri Lebedev gave or agreed to give or offered or promised something of value to Trevon Gross as alleged in the Indictment.

The law makes no distinction between offering, promising, or actually giving a corrupt payment. The mere offer or promise of such a payment is just as much a violation of the statute as the actual giving of one.

It is not necessary that the Government prove that the payment was made directly to Trevon Gross. If the payment was made corruptly, or was offered or promised to be made corruptly, to a third party, such as another person or entity, with intent to influence or reward Trevon Gross, that is sufficient to satisfy this element.

Instruction No. 16: Count Two, Third Element: Corrupt Intent to Influence Business of the Financial Institution

The third element the Government must prove beyond a reasonable doubt is not just that Yuri Lebedev gave or agreed to give or offered or promised something of value to Trevon Gross, but that he did so knowingly and corruptly and with the intent to influence or reward Trevon Gross in connection with any business or transaction of HOPE Federal Credit Union.

To act corruptly means to act voluntarily and deliberately with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. This involves conscious wrongdoing, or as it sometimes has been expressed, a bad or evil state of mind. The motive to act corruptly is ordinarily a hope or expectation of either financial gain or some other benefit to oneself or some profit or benefit to another.

The relevant question for your consideration with respect to Count Two is Yuri Lebedev's intent, not Trevon Gross's intent. In order to find Yuri Lebedev guilty, the Government does not have to prove that Trevon Gross had a corrupt intent, corruptly accepted any payment, or that a payment corruptly influenced any business or transaction of HOPE Federal Credit Union. Nor is it necessary for the Government to prove that Trevon Gross had the authority to perform the act that Yuri Lebedev allegedly corruptly sought for him to undertake. Also, if you find that Yuri Lebedev acted with the intent to reward Trevon Gross for a decision already made, it does not matter that the payment was not made or offered until after the decision was made.

Instruction No. 17: Count Two, Fourth Element: Value Greater Than $1,000

The fourth element the Government must prove beyond a reasonable doubt is that the thing of value given or agreed to or offered or promised by Yuri Lebedev had a value greater than $1,000. The Government need not prove the exact value of the thing of value as long as there is proof beyond a reasonable doubt that the value exceeded $1,000.

Instruction No. 18: Count Three: Accepting Corrupt Payments as an Officer of a Financial Institution

Count Three of the Indictment charges Trevon Gross with corruptly soliciting, demanding for the benefit of any person, accepting, or agreeing to accept payments as an officer of a financial institution with intent to be influenced or rewarded. In order to find Trevon Gross guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First, that Trevon Gross was an officer or director or employee of a financial institution;

Second, that Trevon Gross solicited, demanded, accepted, or agreed to accept something of value, either for his own benefit or the benefit of another;

Third, that Trevon Gross did so knowingly and corruptly, and with the intent to be influenced or rewarded in connection with any business or transaction of HOPE Federal Credit Union; and

Fourth, that the thing of value solicited, demanded, accepted or agreed to accept, had a value greater than $1,000.

I have already instructed you on the meaning of these elements in discussing Count Two, and you should follow those instructions with respect to this Count.

With respect to the third element – corrupt intent – remember that to act corruptly means to act voluntarily and deliberately with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. Here, it is Trevon Gross's intent in accepting the payments that is the relevant question, not the intent of the person or persons offering or making the payments. Even if you find that payments were made to

Trevon Gross with a corrupt intent, you may not find Trevon Gross guilty unless you find that he also acted with a corrupt intent.

Remember that it is Trevon Gross's intent to be influenced or rewarded that matters, not the subsequent actions he undertook concerning HOPE Federal Credit Union or the subsequent actions of HOPE Federal Credit Union. In order to find Trevon Gross guilty, the Government does not have to prove that the payment or offer of payment actually influenced any of Trevon Gross's decisions concerning HOPE Federal Credit Union. Also, if you find that Trevon Gross acted with the intent to be rewarded for a decision already made, it does not matter that the payment was not made or offered until after the decision was made.

Also remember that in order to find Trevon Gross guilty, the Government does not have to prove that Trevon Gross received the payments directly. If Trevon Gross corruptly solicited, demanded, accepted, or agreed to accept a payment on behalf of another person or entity with the intent to be influenced or rewarded, that is sufficient to find him guilty.

Instruction No. 19: Bona Fide Payments

The corrupt payments statute charged in Counts Two and Three does not criminalize legitimate commercial and business practices. It only applies to payments made with a corrupt intent. Thus, the statute does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. Bona fide means in good faith or without deceit or fraud. If you find that either of the Defendants made or accepted, or offered or agreed to make or accept, bona fide payments without corrupt intent, you must find that Defendant not guilty on the count you are considering.

Instruction No. 20: Count One: Overview

I will now turn to the conspiracy offense charged in Count One. Count One charges Yuri Lebedev and Trevon Gross with conspiring to violate certain federal laws.

A conspiracy is a kind of criminal partnership—an agreement or understanding between two or more persons to accomplish some unlawful purpose. The crime of conspiracy to violate federal law is an independent offense from the actual violation of any specific federal law. Indeed, you may find either of the Defendants guilty of conspiring to violate federal law even if you find that the crimes which were the objects of the conspiracy were never actually committed.

Count One charges Yuri Lebedev and Trevon Gross with conspiring with others, from in or about April 2014 to in or about 2015, to achieve four unlawful objectives in an effort to further the operations of Coin.mx or the Collectables Club: (1) to make corrupt payments to Trevon Gross with the intent to influence Trevon Gross in connection with the business of HOPE FCU; (2) to have Trevon Gross receive or agree to receive corrupt payments with the intent to be influenced in connection with the business of HOPE FCU; (3) to obstruct an examination of HOPE FCU by the NCUA; and (4) to make false statements to the NCUA in connection with the NCUA's examinations of HOPE FCU.

As is clear from the Indictment, the Government has charged the Defendants with what is called a "multi-object conspiracy," that is, a conspiracy with more than one objective.

The first object of the alleged conspiracy was to make corrupt payments to Trevon Gross with the intent to influence Trevon Gross in the business of HOPE Federal Credit Union, in violation of Title 18, United States Code, Section 215(a)(1).

The second object of the alleged conspiracy was to have Trevon Gross receive or agree to receive the corrupt payments with the intent to be influenced in the business of HOPE Federal Credit Union, in violation of Title 18, United States Code, Section 215(a)(2).

The third object of the alleged conspiracy was to obstruct an examination of HOPE Federal Credit Union by the National Credit Union Administration (NCUA), in violation of Title 18, United States Code, Section 1517.

The fourth object of the alleged conspiracy was to make false statements to the NCUA, in violation of Title 18, United States Code, Section 1001.

In order to find Yuri Lebedev or Trevon Gross guilty on Count One, you must find that the Government has proven each of the following elements beyond a reasonable doubt as to that Defendant:

First, that there was an agreement between two or more persons to commit one or more of the crimes that were the objects of the conspiracy charged in the Indictment;

Second, that the Defendant you are considering knowingly and willfully became a member of the conspiracy charged; and

Third, that any one of the conspirators knowingly committed at least one overt act in furtherance of the conspiracy.

I will now discuss each of these elements in more detail.

Instruction No. 21: Count One, First Element: Existence of the Conspiracy

The first element which the Government must prove beyond a reasonable is that two or more persons entered the unlawful agreement charged in Count One of the Indictment – that is, that two or more persons agreed to commit at least one of the four criminal objects charged in the Indictment.

As I previously stated, a conspiracy is an agreement or understanding between two or more persons to accomplish some unlawful purpose. To establish the existence of a conspiracy, however, the Government is not required to show that two or more people sat around a table and entered into a formal contract. It is sufficient if two or more persons, in any manner, came to a common understanding to violate the law. Express language or specific words are not required to indicate agreement to or membership in a conspiracy. As I already told you, it is not necessary that a conspiracy actually succeed in its purpose for you to conclude that it existed. Nevertheless, in determining whether two or more individuals have agreed to commit a crime, you may look at all of their conduct – including any acts done to carry out an apparent criminal purpose – and determine whether that conduct reflects an intent to carry out a common criminal purpose. The old saying "actions speak louder than words" applies here.

If, upon consideration of all the evidence, direct and circumstantial, you find that the Government has proven beyond a reasonable doubt that there was a meeting of the minds or agreement between two or more persons to commit one or more of the crimes that are the objects of the conspiracy charged in Count One, then proof of the existence of a conspiracy is established. Mere discussions about crimes or mere knowledge of crimes without an agreement to commit them is not a conspiracy. Further, an agreement to achieve a lawful goal is not the same as a criminal conspiracy – two or more individuals must have agreed to commit a crime.

It is also not necessary for the Government to prove that two or more individuals agreed to commit all four criminal objects of the conspiracy as charged in Count One of the Indictment. An agreement to accomplish any one of the alleged objects is sufficient. But if you do not unanimously find beyond a reasonable doubt that all of the objects of the conspiracy were proven, you must be unanimous as to which object you do find proven. In other words, to return a verdict of guilty on Count One, you must reach agreement as to at least one object of the alleged conspiracy and find that the defendant in question knowingly and intentionally entered into an agreement to achieve that unlawful objective.

I have instructed you on the elements of the substantive bribery offenses charged in Counts Two and Three, which are the first two alleged objects of the conspiracy charged in Count One. You should follow those instructions here.

I will now instruct you on the elements of the substantive offenses that are the third and fourth objects of the alleged conspiracy.

Instruction No. 22: Count One, First Element, Third Object: Obstruction of an Examination of a Financial Institution

The third object of the conspiracy charged in Count One is to corruptly obstruct an examination of a financial institution, specifically, HOPE Federal Credit Union, by an agency of the United States with jurisdiction to conduct an examination, specifically, the National Credit Union Administration (NCUA), in violation of Title 18, United States Code, Section 1517. This crime has three elements:

First, that on or about the dates set forth in the Indictment, an agency of the United States with jurisdiction to conduct an examination, in this case, the NCUA, was in fact conducting an examination of a financial institution, specifically HOPE Federal Credit Union. In order to establish that HOPE Federal Credit Union was a financial institution, the Government must prove that HOPE Federal Credit Union was a credit union with accounts insured by the National Credit Union Share Insurance Fund. I instruct you that the NCUA is an agency of the United States with jurisdiction to conduct an examination of a credit union with accounts insured by the National Credit Union Share Insurance Fund.

Second, that a Defendant or a co-conspirator knew that the NCUA was conducting an examination of HOPE Federal Credit Union; and

Third, that a Defendant or a co-conspirator corruptly obstructed or attempted to obstruct the NCUA's examination.

The success of the endeavor to obstruct the NCUA's examination is not an element of the crime. Thus, it is sufficient if you find that a Defendant or a co-conspirator corruptly made any effort or did any act for the purpose of obstructing the NCUA examination, even if the examination was not in fact obstructed. The word “corruptly” as used in the statute means simply having the improper motive or purpose of obstructing the examination.

Instruction No. 23: Count One, First Element, Fourth Object: False Statements to the NCUA

The fourth object of the conspiracy charged in Count One is knowingly and willfully making materially false statements to the executive branch of the Government of the United States, specifically, the National Credit Union Administration (NCUA), in violation of Title 18, United States Code, Section 1001. This crime has five elements:

First, that on or about the dates set forth in the Indictment, a Defendant or a co-conspirator did one or more of the following:

(a) Falsify, conceal or cover up a fact. As used in the statute, the term "falsify" means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To "conceal" means to withhold from another. It requires some act to prevent detection of some fact the Defendant was required to reveal. And to "cover up" means to hide from another. The Government must prove, beyond a reasonable doubt, that the Defendant had a legal duty to disclose the fact concealed or covered up.

(b) Make a statement or representation. In this regard, the government need not prove that the Defendants or a co-conspirator physically made or otherwise personally prepared the statement in question. It is sufficient if the Defendants or a co-conspirator caused the statement to have been made. Under this statute, there is no distinction between written and oral statements.

(c) Use a writing or document. In this regard, the Government need not prove that the Defendants or a co-conspirator personally prepared the writing or document. It is sufficient to satisfy this element if you find that the Defendants or a co-conspirator caused the writing or document to be used.

Second, if a Defendant or a co-conspirator did one or more of the acts in the first element, that the act or acts were done as follows:

(a) Falsify or conceal or cover up by trick, scheme or device. This language is almost self-explanatory. A scheme is a plan for the accomplishment of an object. A trick or device is a deceptive act or strategy calculated to deceive other persons.

(b) Make a statement or representation that was false, fictitious or fraudulent.

(c) Use a writing or document containing a statement or entry that was false, fictitious or fraudulent.

A statement or representation or entry is "false" or "fictitious" if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. A statement or representation or entry is "fraudulent" if it was untrue when made and was made or caused to be made with the intent to deceive the NCUA.

Third, that the fact falsified or concealed or covered up, or the false, fictitious, or fraudulent statement or representation, or the false, fictitious, or fraudulent statement or entry contained in a writing or document, was material. A fact or statement or representation or entry is "material" if it has a natural tendency to influence or is capable of influencing the NCUA's decisions or activities. However, proof of actual reliance on the fact or statement or representation or entry by the NCUA is not required.

Fourth, that a Defendant or a co-conspirator acted knowingly and willfully. An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly or accidentally.

An act is done willfully if it is done with an intention to do something the law forbids, a bad purpose to disobey the law, and, only with respect to concealment, with specific intent to fail to do something the law requires to be done.

Fifth, and finally, that the falsification, concealment, or cover-up was with respect to a matter within the jurisdiction of the Government of the United States. I charge you that the NCUA is a department of the United States government. To be within the jurisdiction of the Government of the United States means that the statement must concern an authorized function of that federal department or agency, in this case, the NCUA. It is not necessary for the Government to prove that the Defendants had actual knowledge that the false statement was to be utilized in a matter that was within the jurisdiction of the NCUA. It is sufficient to satisfy this element if you find that the false statement was made with regard to a matter within the jurisdiction of the NCUA.

I instruct you that under the false statements statute, it is not necessary for the Government to prove that the NCUA was, in fact, misled as a result of the action of the Defendants. It does not matter that the NCUA was not misled, or even that it knew of the misleading or deceptive act, should you find that the act occurred. These circumstances would not excuse or justify a concealment undertaken, or a false, fictitious or fraudulent statement made, or a false writing or document submitted, willfully and knowingly about a matter within the jurisdiction of the NCUA.

Instruction No. 24: Count One, Second Element: Participation in the Conspiracy

If you find the Government has proven beyond a reasonable doubt that the conspiracy alleged in Count One existed, you must then determine whether the Government has proven beyond a reasonable doubt that Yuri Lebedev and Trevon Gross knowingly and willfully joined that conspiracy.

In determining whether either Defendant became a member of the conspiracy, you must determine not only whether he participated in it, but also whether he did so with knowledge of its illegal objective. Did the specific Defendant join the conspiracy with an awareness of its aim and purpose and with the specific intent of furthering that purpose? Knowledge is a matter of inference from facts proved. To have guilty knowledge, a Defendant need not know the full extent of the conspiracy or even who all the co-conspirators are. Similarly, a Defendant need not know all of the activities of the conspiracy. Indeed, a single act may be enough to bring one within the membership of the conspiracy, provided that the Defendant was aware of the conspiracy and knowingly associated himself with its criminal aims. It does not matter whether a given Defendant's role in the conspiracy may have been more limited than or different in nature from the roles of his co-conspirators, provided he was himself a participant.

Of course, mere presence at a scene of a crime, or mere association with one or more members of a conspiracy, even coupled with awareness that those other people are acting unlawfully, does not make a Defendant a member of the conspiracy. Further, the fact that the acts of a Defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the Defendant a member of the conspiracy. Nor is knowledge of or acquiescence in a conspiracy without participation sufficient. As I have stressed, what is necessary is that the Defendant in question participate in a conspiracy with knowledge of its unlawful purpose and with intent to aid in the accomplishment of that end.

It is also not necessary that the Defendant receive or even anticipate any financial benefit from participating in the conspiracy as long as he participated in it in the way I have explained. That said, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the Defendant had such an interest, that is a factor which you may properly consider in determining whether or not he was a member of the conspiracy charged in the Indictment.

Finally, as I have said before, you must separately determine, as to each Defendant, whether he was a member of the conspiracy.

Instruction No. 25: Count One, Third Element: Overt Act

Let me now turn to the third element of the conspiracy alleged in Count One, the requirement of an overt act.

Count One requires the Government to prove beyond a reasonable doubt that at least one co-conspirator knowingly committed at least one overt act in furtherance of the conspiracy. The overt act element requires the Government to show something more than mere agreement; it must show that some overt step or action was taken by at least one of the conspirators in furtherance of the conspiracy. In other words, the Government must show that the agreement went beyond the mere talking stage. It must show that at least one of the conspirators actually did something in furtherance of the conspiracy.

In order for the Government to satisfy the overt act requirement, it is not necessary for the Government to prove any of the specific overt acts alleged was committed. Nor does the Government have to prove that it was Yuri Lebedev or Trevon Gross who committed the overt act. It is sufficient for the Government to show that any of the members of the conspiracy knowingly committed some overt act in furtherance of the conspiracy. Further, the overt act need not be one that is alleged in the Indictment. Rather it can be any overt act that is substantially similar to those acts alleged in the Indictment, if you are convinced beyond a reasonable doubt that the act occurred while the conspiracy was still in existence and that it was done in furtherance of the conspiracy as described in the Indictment. In addition, you need not be unanimous as to which overt act you find to have been committed. It is sufficient as long as all of you find that at least one overt act was committed by one of the conspirators in furtherance of the conspiracy.

Finally, you should bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme.

Instruction No. 26: Count One: Liability for Acts and Declarations of Co-Conspirators

When people enter into a conspiracy to accomplish an unlawful end, they become agents or partners of one another in carrying out the conspiracy. Accordingly, the reasonably foreseeable acts, declarations, statements, and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy are deemed under the law to be the acts of all of the members. All of the members are responsible for such acts, declarations, statements, and omissions.

If you find beyond a reasonable doubt that the specific Defendant you are considering knowingly and willfully participated in the conspiracy charged in the Indictment, then any acts done or statements made in furtherance of the conspiracy by persons also found by you to have been members of that conspiracy may be considered against that Defendant. This is so even if such acts were done and statements were made in the Defendant's absence and without his knowledge. However, before you may consider the statements or acts of a co-conspirator in deciding the issue of a Defendant's guilt, you must first determine that the acts and statements were made during the existence and in furtherance of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy at the time of the acts or statements, or if they were not done or said in furtherance of the conspiracy, they may be considered by you as evidence only against the member who said or did that.

Instruction No. 27: Count One: Withdrawal from the Conspiracy

A Defendant has raised the defense that he was not a member of the conspiracy because he withdrew from the conspiracy prior to the commission of the first overt act in furtherance of the conspiracy. Once a person joins a conspiracy, that person remains a member until he withdraws from it. Any withdrawal must be complete and it must be done in good faith. But it is a defense to the charge of conspiracy that the defendant withdrew from the conspiracy before the commission of the first overt act in furtherance of the conspiracy. A person can withdraw from a conspiracy by taking some affirmative steps to terminate or abandon his participation in, and efforts to promote, the conspiracy. In order to withdraw from the conspiracy, a defendant must take some definite, decisive, and affirmative action to disavow himself from the conspiracy or to defeat the goal or purpose of the conspiracy.

Merely stopping activities or cooperation with the conspiracy or merely being inactive for a period of time is not sufficient to constitute the defense of withdrawal.

In deciding if the Defendant took a step to disavow or defeat the conspiracy, you may consider whether he told others in the conspiracy that his participation had ended, whether the Defendant took steps to correct prior assistance to the group, and whether he attempted to remedy any past act or attempted to prevent any further progress of the conspiracy.

It is not sufficient to constitute the defense of withdrawal for a defendant to sever ties with some but not all members of the conspiracy. Furthermore, a defendant must not take any subsequent acts to promote the conspiracy, such as steps to conceal the conspiracy, and must not receive any additional benefits from the conspiracy.

The Defendant has the burden of proving that he withdrew from the conspiracy by a preponderance of the evidence. To prove something by a preponderance of the evidence means to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more convincing. In determining whether a defendant has proven that he withdrew from the conspiracy, you may consider all relevant, admissible evidence. If the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve this question against the Defendant. It is important to remember, however, that the fact that a Defendant has raised this defense does not relieve the Government of its burden of proving that there was an agreement, that the Defendant knowingly and voluntarily joined the conspiracy, and that an overt act was committed in furtherance of the conspiracy. Those are things that the Government still must prove beyond a reasonable doubt in order for you to convict the Defendant of the crime of conspiracy.

Instruction No. 28: Count One: Multiple Conspiracies

In this case, the Defendants contend that, as to Count One, the Government's proof fails to show the existence of only one overall conspiracy. Rather, they claim that there were actually several separate and independent conspiracies with various groups of members. Whether there existed a single unlawful agreement, or many such agreements, or indeed, no agreement at all, is a question of fact for you, the jury, to determine in accordance with the instructions I am about to give you.

When two or more people join together to further one common unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

Proof of several separate and independent conspiracies is not proof of the single, overall conspiracy charged in Count One, unless one of the conspiracies proved happens to be the single conspiracy described in Count One of the Indictment.

You may find that there was a single conspiracy despite the fact that there were changes in personnel by additions of new members or loss of old members, or changes in activities, or both, so long as you find that some of the co-conspirators continued to act for the entire duration of the conspiracy for the purposes charged in Count One of the Indictment. The fact that the members of a conspiracy are not always identical does not necessarily imply that separate conspiracies exist.

On the other hand, if you find that the conspiracy charged in Count One did not exist, you cannot find any Defendant guilty of the single conspiracy charged in Count One. This is so even if you find that some conspiracy other than the one charged in Count One existed, even though the purposes of both conspiracies may have been the same and even though there may have been some overlap in membership.

Similarly, if you find that a particular Defendant was a member of another conspiracy, and not the one charged in Count One, then you must acquit the Defendant of the conspiracy charge in Count One.

Therefore, what you must do is determine whether the conspiracy charged in Count One existed. If it did, you then must determine the nature of the conspiracy and who were its members.

Instruction No. 29: Evidence You May Consider

You have seen and heard evidence that sometime after a meeting involving Trevon Gross, Yuri Lebedev, and other members of the Collectables Club, held on or about November 22, 2014, there was a falling-out between Trevon Gross on one hand and the Collectables Club members on the other hand. It is up to you to determine, based on all the evidence, when precisely that falling-out occurred.

You may consider, against both Yuri Lebedev and Trevon Gross, evidence of acts and statements by the defendants and individuals affiliated with HOPE FCU, the Collectables Club, and Kapcharge, that occurred before the date of the falling out between Trevon Gross and the Collectables Club. Evidence of acts and statements by various individuals that occurred after the date of the falling-out between Trevon Gross and the Collectables Club may be considered in the following ways:

Acts and statements by the Defendants and members of the Collectables Club regarding the November 22 meeting or the relationship between Trevon Gross and the Collectables Club, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club, may be considered against both Yuri Lebedev and Trevon Gross.

Acts and statements by Yuri Lebedev and other members of the Collectables Club regarding contacting the NCUA about HOPE FCU, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club, may be considered against both Yuri Lebedev and Trevon Gross.

Acts and statements by Yuri Lebedev and other members of the Collectables Club regarding efforts to take control of credit unions other than HOPE Federal Credit Union and starting a new credit union of their own, including eCommerce PMA Federal Credit Union, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club, (a) may be considered against Yuri Lebedev only for whether the conspiracy charged in Count One existed and who its members were, but not for whether Yuri Lebedev knowingly participated in that conspiracy, and (b) may not be considered against Trevon Gross.

Acts and statements by Trevon Gross; Charles Blue and other individuals affiliated with HOPE FCU; and Mark Francis, Shoula Cohen, and other individuals affiliated with Kapcharge, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club (a) may be considered against Trevon Gross, and (b) may be considered against Yuri Lebedev only for whether the conspiracy charged in Count One existed and who its members were, but not for whether Yuri Lebedev knowingly participated in that conspiracy.

Instruction No. 30: Counts Four through Six: Overview

Count Four alleges that Yuri Lebedev conspired to commit wire and bank fraud. Counts Five and Six allege that Yuri Lebedev committed the substantive crimes of wire fraud and bank fraud, respectively. Trevon Gross is not charged in Counts Four through Six.

I have already explained the elements of conspiracy when I discussed Count One and you should follow those instructions with respect to the conspiracy charged in Count Four with one exception. Unlike the conspiracy charged in Count One you do not have to find that any overt act was committed by any conspirator in furtherance of the conspiracy charged in Count Four. In other words, the law does not require the Government to prove that any overt act was committed in order to prove a conspiracy to commit wire fraud or bank fraud. I remind you, however, that if you do not unanimously find that both wire fraud and bank fraud were objects of the conspiracy, in order to convict Yuri Lebedev on Count Four you must unanimously agree that either wire fraud or bank fraud was an object of the conspiracy.

I will now explain the elements of wire fraud and bank fraud, which are the two objects of the conspiracy charged in Count Four.

Instruction No. 31: Count Five: Wire Fraud

Count Five charges Yuri Lebedev with wire fraud. In order to find the Defendant guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First: That the scheme or artifice to defraud others of money or property by materially false and fraudulent pretenses which is charged in Count Five of the Indictment existed in or about the times alleged in the Indictment ;

Second: That the Defendant knowingly, willfully, and with the specific intent to defraud, participated in the scheme or artifice, with knowledge of its fraudulent nature; and

Third: That in execution of the scheme, the Defendant used or caused the use by others of interstate or international wires.

Instruction No. 32: Count Five, First Element: Scheme or Artifice to Defraud

The first element the Government must prove beyond a reasonable doubt is the existence of a scheme or artifice to defraud others of money or property by means of false or fraudulent pretenses, representations, or promises. I will now define some of these terms for you.

A "scheme or artifice" is simply a plan that is designed to accomplish an objective.

"Fraud" is a broad term. It includes all the possible means by which a person seeks to gain some unfair advantage over another by false representations, false suggestion, false pretenses, concealment of the truth, or deliberate disregard for the truth. Thus, a "scheme or artifice to defraud" is any plan, device, or course of action to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises. It is a plan to deprive another of money or property by trick, deceit, or swindle. Here, the Government alleges that the scheme to defraud was carried out by making false and fraudulent statements and representations to financial institutions.

A statement or representation is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it was false and the Defendant made it with the intent to deceive.

The false or fraudulent representation or concealment in a wire fraud scheme must relate to a material fact or matter. A material fact is one you would reasonably expect to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must also determine whether that statement was one that a reasonable person would have considered important in making his or her decision.

To find an untruthful statement or representation material, you must conclude that the statement or representation was one that was capable of influencing the decision-maker to whom it was directed—here, a financial institution—and was intended by the Defendant to influence the financial institution's decision. It does not matter whether the financial institution actually relied on the misrepresentation. However, the misrepresentation had to be capable of influencing the financial institution, and intended by the Defendant to influence the financial institution, whether it influenced the financial institution or not.

The Government is not required to establish that anyone actually relied on any false or fraudulent statement or representation. Rather the statement or representation merely had to be capable of influencing the financial institution; whether the financial institution was actually influenced or not is of no moment.

In order to establish a scheme to defraud, the Government must also prove that the alleged scheme contemplated depriving the financial institution of money or property. In this regard, a person is not deprived of money or property only when someone directly takes money or property from that person, although that is obviously one way that a person or entity can be so deprived.

A person can also be deprived of money or property when that person is provided false or fraudulent information that, if believed, would prevent the person from being able to make informed economic decisions about what to do with his or her money or property. In other words, a person is deprived of money or property when the person is deprived of the right to control that money or property.

Because the Government need only show that a scheme to defraud existed, not that it succeeded, it is not necessary for the Government to prove that the financial institutions actually lost money or property as a result of the scheme. For you to find Yuri Lebedev guilty, however, the Government must prove that such a loss was contemplated by the Defendant. That is, to carry its burden, the Government must prove that the Defendant contemplated and intended doing harm to a victim—that he intended to do something more than merely deceive the financial institutions.

In considering whether contemplation of the required loss was proved by the Government, keep in mind that the loss of the right to control money or property constitutes deprivation of money or property only when the scheme, if it were to succeed, would result in economic harm to the victim. If all the Government proves is that under the scheme, it was contemplated that the financial institutions would enter into transactions they would otherwise not have entered into, without proving that the financial institutions would thereby have suffered economic harm, then the Government will not have met its burden of proof.

A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.

Finally, it does not matter whether the financial institutions might have discovered the fraud had they probed further. If you find that a scheme existed, it is irrelevant whether you believe that the victim was careless, gullible, or even negligent.

Instruction No. 33: Count Five, Second Element: Knowledge and Intent to Defraud

The second element that the Government must prove beyond a reasonable doubt is that Yuri Lebedev participated in a scheme to defraud knowingly, willfully, and with specific intent to defraud.

To participate in a scheme means to engage in it, by taking some affirmative step to help it succeed.

I have already instructed you on the meaning of "knowingly" and "willfully" and you should follow those instructions here.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial harm or deprivation of property to another. The Government need not prove that any intended victim was actually harmed; only that such harm was contemplated.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one's state of mind.

Science has not yet invented a way for us to look inside someone's head to see what he is thinking and intending and knowing. Direct proof of knowledge, willfulness, and fraudulent intent is almost never available. Rarely is it the case that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, words, conduct, and acts, taken in light of all the surrounding circumstances that are disclosed by the evidence, together with the rational or logical inferences that may be drawn from them.

What is referred to as drawing inferences from circumstantial evidence is no different from what people normally mean when they say, "use your common sense." Using your common sense means that, when you come to decide whether the Defendant possessed or lacked an intent to defraud, you need not limit yourself to just what the Defendant said, but you may also look at what the Defendant did and what others did in relation to the Defendant and, in general, to everything that occurred.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime must be proven beyond a reasonable doubt.

In order to sustain the charges against Yuri Lebedev, the Government must prove beyond a reasonable doubt that the Defendant participated in the alleged scheme with an understanding of its fraudulent or deceptive character and with the intent to help it succeed.

That said, there are certain things that the Government need not prove in order to meet its burden. It need not prove that the Defendant participated in or even knew about all of the operations of the scheme. It need not prove that the Defendant originated or invented the scheme, or participated in it from its inception. A person who begins to participate in a scheme after it begins is just as guilty as a person who participates from the beginning, as long as the person who joins at a later point becomes aware of the scheme's general purpose and operation and acts intentionally to further its unlawful goal or goals. Finally, the Government need not prove that the Defendant participated in the scheme to the same degree as other participants.

Instruction No. 34: Count Five, Third Element: Use of Interstate Wires

The third element the Government must prove beyond a reasonable doubt is the use of an interstate or international wire communication in furtherance of the scheme to defraud. The wire communication must pass between two or more states as, for example, an email sent from New York to Florida, or it must pass between the United States and a foreign country as, for example, an email sent from New York to London. A wire communication also includes a wire transfer of funds between banks in different states or between a bank in the United States and a bank in a foreign country.

The use of the wires need not itself be a fraudulent representation. It must, however, further or assist in the carrying out of the scheme to defraud. It is not necessary for Yuri Lebedev to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which Yuri Lebedev is accused of participating.

In this regard, it is sufficient to establish this element of the crime if you find that Yuri Lebedev caused the wires to be used by others. This does not mean that the Defendant must specifically have authorized others to make the telephone call, send the email, or transfer the funds. When one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even though not actually intended, then a person "causes" the wires to be used.

Instruction No. 35: Count Six: Bank Fraud

Count Six charges Yuri Lebedev with bank fraud. In order to find the Defendant guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First, that there was a scheme to obtain money or property owned by or under the custody or control of a bank by means of materially false or fraudulent pretenses, representations or promises as charged in the Indictment;

Second, that the Defendant executed or attempted to execute the scheme with the intent to obtain money or property owned or under the custody or control of the bank; and

Third, that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

Instruction No. 36: Count Six, First Element: Scheme to Obtain Money or Property Under Bank's Control

The first element that the Government must prove beyond a reasonable doubt is that there was a scheme to obtain money or property owned by or under the custody or control of a bank by means of false or fraudulent pretenses, representations or promises as described in the Indictment.

I have instructed you on the meaning of "scheme" and you should follow that instruction here.

A representation is fraudulent if it was falsely made with the intent to deceive. Deceitful statements of half-truth, the concealment of material facts, and the expression of an opinion not honestly entertained may constitute false or fraudulent representations under the statute. The deception need not be premised upon spoken or written words alone, however. The arrangement of the words, or the circumstances in which they are used may convey a false and deceptive appearance. If there is intentional deception, the manner in which it is accomplished does not matter.

In addition, the fraudulent representation must relate to a material fact or matter. I have previously instructed you on the meaning of "material" and you should follow that instruction here.

Instruction No. 37: Count Six, Second Element: Intent to Obtain Money or Property

The second element the Government must prove beyond a reasonable doubt is that the Defendant executed or attempted to execute the scheme knowingly and willfully and with the intent to obtain money or funds owned by or under the custody or control of the bank.

I have already instructed you on the meaning of "knowingly" and "willfully" and you should follow those instructions here.

I remind you that the ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime charged must be established beyond a reasonable doubt.

Instruction No. 38 Count Six, Third Element: FDIC Insured

The last element the Government must prove beyond a reasonable doubt is that the relevant bank was insured by the Federal Deposit Insurance Corporation at the time of the execution of the alleged scheme to defraud.

As to this last element there is no issue since a stipulation was entered into and read to you in which the parties agree that the relevant banks were insured by the Federal Deposit Insurance Corporation at the time in question.

Furthermore, it is not necessary for the Government to prove that the Defendant knew the identity of a particular bank or that the Defendant knew that the bank was insured by the Federal Deposit Insurance Corporation. It must only prove that the Defendant intended to obtain money or funds owned by or under the custody or control of a bank by means of false or fraudulent pretenses, representations or promises.

OTHER INSTRUCTIONS

Instruction No. 39: Conscious Avoidance

This concludes my instructions on the crimes charged in the Indictment, but before I move onto my remaining instructions, I want to now instruct you on the concept of conscious avoidance.

I instructed that in order to find the Defendants guilty on the counts in which they are charged, you must find that they acted knowingly in various respects. In determining whether a particular Defendant acted knowingly, you may consider whether that Defendant deliberately closed his eyes to what otherwise would have been obvious to him. That is what the phrase "conscious avoidance" refers to.

As I told you before, acts done knowingly must be a product of a person's conscious intention. They cannot be the result of carelessness, negligence, or foolishness. A Defendant may not, however, willfully and intentionally remain ignorant of a fact material and important to his own conduct in order to escape the consequences of criminal law. We refer to this notion of intentionally blinding yourself to what is staring you in the face as conscious avoidance.

An argument by the Government of conscious avoidance is not a substitute for proof; it is simply another factor that you, the jury, may consider in deciding what a Defendant knew. Thus, if you find beyond a reasonable doubt that a particular Defendant was aware that there was a high probability that a fact was so, but that the Defendant deliberately avoided confirming this fact, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

However, if you find that the Defendant had an actual, good faith belief that the particular fact was true, he may not be convicted.

With respect to the conspiracy counts, you must also keep in mind that there is an important difference between intentionally participating in the conspiracy, on the one hand, and knowing the specific object of the conspiracy, on the other. You may consider conscious avoidance in deciding whether a Defendant knew the objective of a conspiracy, that is, whether a Defendant reasonably believed that there was a high probability that a goal of the conspiracy was to commit the crime charged as the object of that conspiracy and deliberately avoided confirming that fact, but participated in the conspiracy anyway. But conscious avoidance cannot be used as a substitute for finding that a Defendant intentionally joined the conspiracy in the first place. It is logically impossible for a Defendant to intend and agree to join a conspiracy if he does not actually know it exists, and that is the distinction I am drawing.

In sum, if you find that a particular Defendant believed there was a high probability that a fact was so and that the Defendant deliberately and consciously avoided learning the truth of that fact, you may find that the Defendant acted knowingly with respect to that fact. However, if you find that the Defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact.

Instruction No. 40: Good Faith

As to each count, I have instructed you as to what state of mind the Government must prove each Defendant had to be guilty of that crime. You are to assess each Count and Defendant separately, and in each case review the instructions as to that specific Count.

Nevertheless, let me advise you that a Defendant's good faith is a complete defense to all of the charges in this case. If a Defendant believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were ultimately injured by his conduct (contrary to his intention), there would be no crime. The burden of establishing criminal intent and lack of good faith rests upon the Government. A Defendant is under no burden to prove his or her good faith; rather, as to each Count in the Indictment, the Government must prove bad faith as to each Defendant beyond a reasonable doubt.

Instruction No. 41: Aiding and Abetting

In connection with the substantive crimes charged in Counts Two, Five, and Six, Yuri Lebedev is charged with committing certain criminal acts and also with aiding and abetting the commission of those acts. As to each of those counts, the Defendant can be convicted either if he committed the crime himself or if the Government proves beyond a reasonable doubt that he aided and abetted the commission of the crime by one or more other persons.

A person who aids and abets another in committing an offense is just as guilty of that offense as if he had committed it himself. Therefore, if you find that the Government has proven beyond a reasonable doubt that another person actually committed a crime with which Yuri Lebedev is charged in the Indictment, and proved that Yuri Lebedev aided and abetted that person in the commission of the offense, then you may find him guilty of that crime.

In order to convict on an aiding and abetting theory, you must first find that another person has committed the crime charged. Obviously, the Defendant cannot be convicted of aiding and abetting the criminal act of another if no crime was actually committed by the other person. In other words, if you find that no one committed the crimes listed in the Indictment under Counts Two, Five, and Six, then you cannot consider the possibility that the Defendant aided or abetted in the commission of any of those offenses. But if you do find that a crime was committed, then you must consider whether the Government has proved that the Defendant aided or abetted the commission of that crime.

In order to aid and abet another in committing a crime, it is necessary that the Government prove that the Defendant willfully and knowingly associated himself in some way with the crime, and that he willfully and knowingly sought by some act to help make the crime succeed. The intent necessary to support a conviction for aiding and abetting goes beyond mere knowledge by the Defendant that his action would tend to advance some nefarious purpose of the principal. Rather, the Government must prove that the Defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about the crime described in the Indictment.

In sum, to determine whether Yuri Lebedev aided and abetted the commission of the crime you are considering, the Government must prove that the Defendant: (1) participated in the crime charged as something he wished to bring about; (2) associated himself with the criminal venture knowingly, deliberately, and willfully; and (3) intended by his actions to make the criminal venture succeed. If the Government has proved these three things beyond a reasonable doubt, then the Defendant is an aider and abettor and guilty of the crime charged. If the Government's proof has failed to prove these three things, then the Defendant is not an aider and abettor and you must find him not guilty of the crime charged.

Instruction No. 42: Venue

In addition to the foregoing elements I have described for you, it is also necessary for you to decide, as to each Count, whether any part of the offense reached within this District: the Southern District of New York. The Southern District of New York comprises the following counties: Manhattan, the Bronx, Westchester, Dutchess, Putnam, Rockland, Orange, and Sullivan. This is called "venue." Venue means place or location.

Venue must be examined separately for each count in the Indictment. Venue on one count does not establish venue on another count, though if applicable, you may rely on the same evidence to establish venue on multiple counts.

As to the conspiracy charges, the Government need not prove that any crime was completed in this District or that the Defendants or any of their co-conspirators were physically present here. Rather, venue is proper in this District if any of the Defendants or their co-conspirators caused any act or event to occur in this District in furtherance of the offense, and it was reasonably foreseeable to the Defendant that you are specifically considering that the act would take place in the Southern District of New York.

As to the substantive counts – that is, the non-conspiracy counts – the Government again need not prove that any crime was completed in this District or that the Defendant in question was physically present here. Rather, venue is proper in this District provided that any act in furtherance of the essential conduct of the crime took place in the Southern District of New York. Again, the Defendant you are considering need not have specifically intended to cause an act or event to happen in this District, or even known that he was causing an act or event to happen here, as long as it was reasonably foreseeable to that specific Defendant that such act would occur in this District and it in fact occurred.

On the issue of venue—and this alone—the Government need not prove venue beyond a reasonable doubt, but only by a mere preponderance of the evidence. A "preponderance of the evidence" means more likely than not. Thus, the Government, which does bear the burden of proving venue, has satisfied that burden as to venue if you conclude that it is more likely than not that some act or communication in furtherance of each charged offense occurred in the Southern District of New York, and it was reasonably foreseeable to each Defendant that the act would so occur. If, on the other hand, you find that the Government has failed to prove the venue requirement as to a particular offense, then you must acquit the Defendant of that offense, even if all other elements of the offense are proven.

Instruction No. 43: Variance in Dates

The Indictment alleges that certain conduct occurred on or about various dates or during various time periods. It is not necessary, however, for the Government to prove that any conduct alleged occurred exactly on such dates or throughout any such time periods. As long as the conduct occurred around any dates or within any time periods the Indictment alleges it occurred, that is sufficient.

GENERAL INSTRUCTIONS

Instruction No. 44: Direct and Circumstantial Evidence

I turn now to some general instructions. There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. One kind of direct evidence is a witness's testimony about something the witness knows by virtue of her or his own senses – something the witness has seen, felt, touched or heard. Direct evidence may also be in the form of exhibit.

The other type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove one fact by proof of other facts. There is a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that there are blinds on the courtroom windows that are drawn and that you cannot look outside. As you are sitting here, someone walks in with an umbrella that is dripping wet. Some else then walks in with a raincoat that is also dripping wet.

Now, you cannot look outside the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of the facts that I have asked you to assume, it would be reasonable and logical for you to conclude that between the time you arrived at the courthouse and the time these people walked in, it had started to rain.

That is all there is to circumstance evidence. You infer on the basis of reason and experience and common sense from an established fact the existence or nonexistence of some other fact.

Many facts, such as a person's state of mind, can only rarely be proved by direct evidence. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting the Defendant you, the jury, must be satisfied of the Defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Instruction No. 45: Inferences

During the trial, and as I give you these instructions, you have heard and will hear the term "inference." For instance, in their closing arguments, the attorneys have asked you to infer, based on your reason, experience, and common sense, from one or more established facts, the existence of some other fact. I have instructed you on circumstantial evidence and that it involves inferring a fact based on other facts, your reason, and common sense.

What is an "inference"? What does it mean to "infer" something? An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists based on another fact that you are satisfied exists.

There are times when different inferences may be drawn from facts, whether proven by direct or circumstantial evidence. The Government asks you to draw one set of inferences, while the Defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are permitted but not required to draw from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

Therefore, while you are considering the evidence presented to you, you may draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

Some inferences, however, are impermissible. You may not infer that a Defendant is guilty of participating in criminal conduct if you find merely that he was present at the time the crime was being committed and had knowledge that it was being committed. Nor may you use evidence that I have instructed you was admitted for a limited purpose for any inference beyond that limited purpose.

In addition, you may not infer that a Defendant is guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing or merely because he has or had knowledge of the wrongdoing of others.

Here again, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of each Defendant you are considering beyond a reasonable doubt before you may convict that defendant of any of the crimes charged.

Instruction No. 46: Credibility of Witnesses

You have had the opportunity to observe the witnesses. It is your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of the witnesses. How do you evaluate the credibility or believability of the witnesses? The answer is that you use your common sense, judgment, and experience. Common sense is your greatest asset as a juror. You should ask yourselves, did the witness impress you as honest, open, and candid? Or did the witness appear evasive, as though the witness was trying to hide something? How responsive was the witness to the questions asked on direct examination and on cross-examination? Consider the witness's demeanor, manner of testifying, and accuracy of the witness's recollection. In addition, consider how well the witness recounted what was heard or observed, as the witness may be honest but mistaken.

If you find that a witness is intentionally telling a falsehood that is always a matter of importance that you should weigh carefully. If you find that any witness has lied under oath at this trial, you should view the testimony of such a witness cautiously and weigh it with great care. You may reject the entirety of the witness's testimony, part of it or none of it. It is for you to decide how much of a witness's testimony, if any, you wish to credit. A witness may be inaccurate, contradictory, or even untruthful in some respects and yet entirely believable and truthful in other respects. It is for you to determine whether such untruths or inconsistencies are significant or inconsequential, and whether to accept or reject all or to accept some and reject the balance of the testimony of any witness.

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care. This is not to suggest that any witness who has an interest in the outcome of a case would testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

You are not required to accept testimony even though the testimony is not contradicted and the witness's testimony is not challenged. You may decide because of the witness's bearing or demeanor, or because of the inherent improbability of the testimony, or for other reasons sufficient to yourselves that the testimony is not worthy of belief. On the other hand, you may find, because of a witness's bearing and demeanor and based upon your consideration of all the other evidence in the case, that the witness is truthful.

Thus, there is no magic formula by which you can evaluate testimony. You bring to this courtroom all your experience and common sense. You determine for yourselves in many circumstances the reliability of statements that are made by others to you and upon which you are asked to rely and act. You may use the same tests here that you use in your everyday lives. You may consider the interest of any witness in the outcome of this case and any bias or prejudice of any such witness, and this is true regardless of who called or questioned the witness.

Instruction No. 47: Credibility of Witnesses: Impeachment by Prior Inconsistent Statement

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is inconsistent with the witness's trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on either Defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all of the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

Instruction No. 48: Defendants' Right Not to Testify

One of the Defendants did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to a defendant. A defendant is never required to prove that he is innocent. You may not attach any significance to the fact that the Defendant did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. In addition, even if one Defendant testifies, no adverse inference may be considered against the other Defendant who did not testify. You may not consider this against the Defendants in any way in your deliberations.

Instruction No. 49: Defendants' Testimony

A defendant in a criminal case never has any duty to testify or come forward with any evidence. This is because, as I have told you, the burden of proof beyond a reasonable doubt remains on the Government at all times, and the defendant is presumed innocent. In this case, however, a Defendant did testify and he was subject to cross-examination like any other witness. You should, therefore, examine and evaluate the Defendant's testimony just as you would the testimony of any other witness with an interest in the outcome of the case.

Instruction No. 50: Law Enforcement Witnesses

You have heard the testimony of law enforcement agents. The fact that a witness may be employed as a law enforcement official by the United States Government or by a foreign government does not mean that his or her testimony deserves more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the ground that their testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement or Government employee witness, as it is with every other type of witness, and to give that testimony the weight that you find it deserves.

Instruction No. 51: Accomplice/Cooperating Witness Testimony

You have heard from witnesses who testified that they committed certain of the crimes charged in the Indictment or other crimes. Some of these witnesses have testified under the terms of a cooperation agreement or non-prosecution agreement. There has been a great deal said about these so-called cooperating witnesses in the summations of counsel and whether or not you should believe them. The law permits the use of testimony from such witnesses. Indeed, such testimony, if found truthful by you, may be sufficient in itself to warrant conviction if it convinces you of the Defendant's guilt beyond a reasonable doubt. However, the law requires that the testimony and motives of such witnesses be scrutinized with particular care and caution. After carefully scrutinizing the testimony of such a witness, you may give that testimony as little or as much weight as you deem appropriate. Cooperating witness testimony should be given such weight as it deserves in light of the facts and circumstances before you, taking into account the witness's demeanor, candor, the strength and accuracy of the witness's recollection, the witness's background, the extent to which the testimony is or is not corroborated by other evidence in the case, and the witness's personal interest in testifying.

I have given you some general considerations on credibility and I will not repeat them all here. Nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

In evaluating the testimony of a cooperating witness, you should ask yourselves whether the witness would benefit more by lying, or by telling the truth. Was the witness's testimony made up in any way because she believed or hoped that she would somehow receive favorable treatment by testifying falsely? Or did she believe that her interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which would cause her to lie, or was it one which would cause her to tell the truth? Did this motivation color her testimony?

As with any witness, if you find that the testimony was false, you should reject it. However, if, after a cautious and careful examination of the cooperating witness's testimony and demeanor upon the witness stand, you are satisfied that the witness told the truth, you should accept it as credible and give the testimony whatever consideration you think it deserves. As with any witness, the issue of credibility need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept his or her testimony in other parts, or may disregard all of it. That is a determination entirely for you, the jury.

Instruction No. 52: Opinion of Defendant's Character

Defendant Trevon Gross has called witnesses who have given their opinion of the Defendant's character. This testimony is not to be taken by you as the witness's opinion as to whether the Defendant is guilty or not guilty. That question is for you alone to determine. You should, however, consider this character evidence together with all the other facts and all the other evidence in the case in determining whether the Defendant is guilty or not guilty of the charge. Character evidence may be considered by you in determining whether the Government has proven the Defendant's guilt beyond a reasonable doubt.

Accordingly, if after considering all the evidence, including testimony about the Defendant's good character, you should find a reasonable doubt has been created, you must acquit him of the charge.

On the other hand, if after considering all the evidence, including that of the Defendant's character, you are satisfied beyond a reasonable doubt that the Defendant is guilty, you should not acquit the Defendant merely because you believe him to be a person of good character.

Instruction No. 53: Persons Not on Trial

You may not draw any inference, favorable or unfavorable, towards the Government or the Defendants, from the fact that certain persons were not tried as defendants in this case. The fact that these persons are not on trial here must play no part in your deliberations.

Instruction No. 54: Uncalled Witnesses Equally Available

You have heard the names of several people during the course of the trial who did not appear here to testify and one or more of the attorneys may have referred to their absence. You should not draw any inferences or reach any conclusions as to what these persons would have testified to had they been called. Their absence should not affect your judgment in any way. Remember my instruction, however, that the law imposes no duty on the defendant in a criminal case to call any witnesses or produce any evidence.

Instruction No. 55: Preparation of Witnesses

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the Government lawyers, the defense lawyers, or their own lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, I instruct you that there is nothing either unusual or inherently improper about a witness meeting with the Government lawyers, the defense lawyers, or his or her own lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultations.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

Instruction No. 56: Investigative Techniques

You have heard reference through the questioning to the fact that certain investigative techniques were used or not used by the Government. There is no legal requirement, however, that the Government prove its case through any particular means. Your concern is to determine whether, on the evidence or lack of evidence, the Defendants' guilt has been proven beyond a reasonable doubt.

Instruction No. 57: Use of Electronic Communications

Some of the evidence in this case has consisted of electronic communications seized from computers or electronic accounts. There is nothing illegal about the Government's use of such electronic communications in this case and you may consider them along with all the other evidence in the case. Whether you approve or disapprove of the seizure of these communications may not enter your deliberations.

You may, therefore, regardless of any personal opinions, consider this evidence along with all the other evidence in the case in determining whether the Government has proved beyond a reasonable doubt the guilt of the Defendants. However, as with the other evidence, it is for you to determine what weight, if any, to give such evidence.

Instruction No. 58: Violation of NCUA Law or Regulations Not a Crime

During the trial, you heard evidence about certain provisions of the Federal Credit Union Act and National Credit Union Administration regulations, including those relating to field of membership, the duties and responsibilities of a credit union's board of directors, and reports that are submitted to the National Credit Union Administration.

I instruct you that a violation of any of these laws or regulations, should you find any to have occurred, is not a crime in and of itself. In other words, the Defendants are not charged with criminal violations of the Federal Credit Union Act or the National Credit Union Administration regulations, and you cannot find either Defendant guilty based solely upon a violation of the Federal Credit Union Act or the National Credit Union Administration regulations. You may, however, consider any evidence about any violations of the Federal Credit Union Act or National Credit Union Administration regulations as you would any other evidence in the case.

Instruction No. 59: Use of Evidence From Searches

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Evidence obtained from these searches was properly admitted in this case, and may be properly considered by you. Such searches were appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations, because I instruct you that the Government's use of the evidence is entirely lawful. You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the Government has proven each Defendant's guilt beyond a reasonable doubt. As with all evidence, it is for you to determine what weight, if any, to give such evidence.

Instruction No. 60: Recordings/Transcripts

In connection with the recordings that were introduced into evidence during the trial, you were provided with transcripts of the conversations to assist you while listening to the recordings. I instructed you during the trial, and I remind you now, that the transcripts are not evidence. The transcripts were provided only as an aid to you in listening to the recordings. It is for you to decide whether the transcripts correctly present the conversations recorded on the recordings that you heard. If you wish to hear any of the recordings again, or see any of the transcripts, they will be made available to you during your deliberations.

Instruction No. 61: Stipulations

You have heard some evidence in the form of what are called "stipulations." A stipulation of fact is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

A stipulation of testimony is an agreement among the parties that, if called, a witness would have given certain testimony. You must accept as true the fact that the witness would have given the testimony. However, it is for you to determine the effect or weight to give that testimony.

Instruction No. 62: Summary Exhibits

Some of the exhibits presented in this case were charts, tables, or other forms of summary exhibits. These exhibits are not direct evidence. They are graphic representations or other ways of summarizing more voluminous information that was either described in the testimony of a witness or reflected in documents admitted into evidence. It is often easier and more convenient to use charts, tables, and summaries as opposed to placing all of the underlying documents in front of you. But it is up to you to decide whether the summary exhibits fairly and correctly reflect the underlying testimony and documents they purport to summarize. To the extent that the summary exhibits conform to your understanding of the underlying evidence, you may accept them. To the extent they do not, you should set them aside and rely on the underlying evidence instead. But one way or the other, realize that the summary exhibits are not in and of themselves direct evidence.

Instruction No. 63: Excerpts and Redactions

Some of the exhibits admitted into evidence consist of excerpts of longer documents that were not admitted into evidence in their entirety. There is nothing unusual or improper about the use of such excerpts, and you are not to speculate from the use of such excerpts that any relevant portion of a document has been omitted.

Similarly, some of the exhibits admitted into evidence include redactions of certain information. Again, there is nothing unusual or improper about such redactions, and you are not to speculate from the use of such redactions that any relevant portion of a document has been removed.

Instruction No. 64: Punishment

The question of possible punishment of the Defendants is of no concern to you, the members of the jury, and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court.

Your function is to weigh the evidence in the case and to determine whether or not the Government has proved that the Defendants are guilty beyond a reasonable doubt, solely upon the basis of such evidence.

Instruction No. 65: Right to Hear Testimony; Election of Foreperson; Communications with the Court; Juror Note-Taking

You are about to go into the jury room and begin your deliberations. The documentary evidence will be sent back with you. If you want any of the testimony read to you, that can be arranged. But please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting portions of the testimony that you might want.

Your first task as a jury will be to choose your foreperson. The foreperson has no greater voice or authority than any other juror, but is the person who will communicate with the Court through written note when questions arise and to indicate when you have reached your verdict.

Your requests for testimony—in fact, any communications with the Court— should be made to me in writing, signed by your foreperson, and given to one of the Marshals. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any communication, please do not tell me or anyone else how the jury stands on the issue of the jury's verdict until after a unanimous verdict is reached.

For those of you who took notes during the course of the trial, you should not show your notes to or discuss your notes with any other juror during your deliberations. Any notes you have taken are to assist you and you alone. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror.

Finally, your notes are not to substitute for your recollection of the evidence in this case. If you have any doubt as to any testimony, you may request that the official trial transcript that has been made of these proceedings be read or otherwise provided to you.

Instruction No. 66: CONCLUDING REMARKS

The most important part of this case, members of the jury, is the part that you as jurors are now about to play as you deliberate on the issues of fact. It is for you, and you alone, to weigh the evidence in this case and determine whether the Government has proved beyond a reasonable doubt each of the essential elements of the crime with which each Defendant is charged. If the Government has succeeded, your verdict should be guilty as to that Defendant and that charge; if it has failed, your verdict should be not guilty as to that Defendant and that charge.

You must base your verdict solely on the evidence or lack of evidence and these instructions as to the law, and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question.

Under your oath as jurors, you are not to be swayed by sympathy. You should be guided solely be the evidence presented during the trial and the law as I gave it to you, without regard to the consequences of your decision. You have been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your clear thinking, there is a risk that you will not arrive at a just verdict.

As you deliberate, please listen to the opinions of your fellow jurors, and ask for an opportunity to express your own views. Every juror should be heard. No one juror should hold center stage in the jury room and no one juror should control or monopolize the deliberations. If, after listening to your fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your honest convictions and beliefs solely because of the opinions of your fellow jurors or because you are outnumbered. Your final vote must reflect your conscientious belief as to how the issues should be decided.

Thus, the verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

If at any time you are divided, do not report how the vote stands, and if you have reached a verdict, do not report what it is until you are asked in open court.

Finally, I say this not because I think it is necessary, but because it is the custom in this courthouse to say this: You should treat each other with courtesy and respect during your deliberations.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors, and if you apply your own common sense, you will deliberate fairly.

Members of the jury, I ask your patience for a few minutes longer. It is necessary for me to spend a few moments with counsel and the reporter at the side bar. I will ask you to remain patiently in the jury box, without speaking to each other, and we will return in just a moment to submit the case to you. Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

- v. - : S6 15 Cr. 769 (AJN)

YURI LEBEDEV and
TREVON GROSS,

Defendants. :

- x

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INTRODUCTORY INSTRUCTIONS

Instruction No. 1: Role of the Court

You have now heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties. It is my duty at this point to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

On these legal matters, you must take the law as I give it to you. Regardless of any opinion that you may have as to what the law may be—or ought to be—it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you. If an attorney or anyone else at trial has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room. You may take a copy of these instructions with you into the jury room.

Instruction No. 2: Role of the Jury

Your role is to decide the fact issues that are in the case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence or lack of evidence; you determine the credibility of the witnesses; you resolve such conflicts as there may be in the testimony; and you draw whatever reasonable inferences you decide to draw solely based on the evidence and from the facts as you have determined them. You must determine the facts based solely on the evidence received in this trial.

In determining the facts, you must rely upon your own recollections of the evidence. What the lawyers have said – for instance, in opening statements, in closing arguments, in objections, or in questions – is not evidence. You should bear in mind particularly that questions put to witnesses, although they can provide the context to answers, are not themselves evidence. It is only the answers that are evidence.

I remind you also that nothing I have said during the trial or will say during these instructions is evidence. Similarly, the rulings I have made during the trial are not any indication of my views of what your decision should be.

The evidence before you consists of the answers given by witnesses, the exhibits, and the stipulations that were received in evidence. If I have sustained an objection to a question or told you to disregard testimony, the answers given by a witness are no longer part of the evidence in this case and may not be considered by you.

Instruction No. 3: Statements of Counsel and Court Not Evidence;
Jury's Recollection Controls

As I have said, you must determine the facts by relying upon your own recollection of the evidence. This case is not to be decided on the rhetoric of either the attorneys for the Government or the attorneys for the Defendants. The lawyers' arguments are intended to convince you to draw certain conclusions from the evidence or lack of evidence. Those arguments are important. You should weigh and evaluate them carefully. But you must not confuse them with the evidence. If your recollection of the evidence differs from the statements of the lawyers, follow your recollection.

You should draw no inference or conclusion for or against any party by reason of lawyers making objections or my rulings on such objections. Counsel have not only the right but the duty to make legal objections that they think are appropriate. You should not be swayed against the Government or either Defendant simply because counsel for either side has chosen to make an objection. Similarly, statements made by counsel when arguing the admissibility of evidence are not to be considered as evidence.

If I comment on the evidence during my instructions, do not accept my statements in place of your recollection. Again, it is your recollection that governs.

Do not concern yourself with what was said at side bar conferences or during my discussions with counsel. Those discussions related to rulings of law, which are my duty, and not to matters of fact, which are your duty to determine.

At times I may have admonished a witness or directed a witness to be responsive to questions, to keep his or her voice up, or to repeat an answer. My instructions were intended only to clarify the presentation of evidence. You should draw no inference or conclusion of any kind, favorable or unfavorable, with respect to any witness or party in the case, by reason of any comment, question, or instruction of mine. Nor should you infer that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how you should decide any issue that is before you. That is entirely your role.

Instruction No. 4: Improper Considerations

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence. It would be improper for you to consider any personal feelings you have about the Defendants' race, ethnicity, religion, national origin, sex, age, or other similar factor. Similarly it would be improper for you to consider any personal feelings you may have about the race, ethnicity, religion, national origin, sex, age, or any other similar factor of any other witness or anyone else involved in this case. It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. The Defendant is entitled to a trial free from prejudice and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

Instruction No. 5: All Parties Are Equal Before the Law

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that given to any other party to this litigation. By the same token, the Government is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Instruction No. 6: Presumption of Innocence and Burden of Proof

Yuri Lebedev and Trevon Gross have each pleaded not guilty to the charges against them. As a result of a plea of not guilty, the burden is on the Government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of testifying, or calling any witness, or locating or producing any evidence.

Even if either Defendant has presented evidence in his defense, it is not his burden to prove himself innocent. It is always the Government's burden to prove each of the elements of the crimes charged beyond a reasonable doubt.

Furthermore, the law presumes the Defendants to be innocent of the charges against them. This presumption was with them when the trial began and remains with each of them as you deliberate unless and until you are convinced that the Government has proven that specific Defendant's guilt beyond a reasonable doubt.

Instruction No. 7: Reasonable Doubt

I have said that in order to convict either of the Defendants on any of the charges in the Indictment, the Government is required to prove that charge as to that Defendant beyond a reasonable doubt. The question that naturally arises is, "What is a reasonable doubt?" The words almost define themselves. It is a doubt based in reason and arising out of the evidence in the case, or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all of the evidence in the case.

Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, and your common sense. If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you do have an abiding belief of either Defendant's guilt as to any crime charged in this case, such a belief as a prudent person would be willing to act upon in important matters in the personal affairs of his or her own life, then you have no reasonable doubt, and under such circumstances it is your duty to convict that Defendant of the particular crime in question.

On the other hand, if, after a fair and impartial consideration of all the evidence, you can candidly and honestly say that you are not satisfied with the guilt of either Defendant as to any charge, that you do not have an abiding belief of that Defendant's guilt as to that charge – in other words, if you have such a doubt as would reasonably cause a prudent person to hesitate in acting in matters of importance in his or her own affairs – then you have a reasonable doubt, and in that circumstance it is your duty to acquit that Defendant of that charge.

One final word on this subject: Reasonable doubt is not whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. Nor is it sympathy for either of the

Defendants. The law does not require that the Government prove guilt beyond all possible doubt: proof beyond a reasonable doubt is sufficient to convict.

Instruction No. 8: The Indictment

The Defendants, Yuri Lebedev and Trevon Gross, have been formally charged in what is called an "Indictment." As I instructed you at the outset of this trial, the Indictment is simply a charge or accusation. It is not evidence. Each Defendant begins trial with an absolutely clean slate and without any evidence against him. You must give no weight to the fact that an Indictment has been returned against the Defendants. What matters is the evidence that has been presented at the trial and the lack of evidence.

I will next summarize the charges in the Indictment and then explain in detail the elements of each offense.

CHARGE

Instruction No. 9: Summary of the Indictment

The Defendants, Yuri Lebedev and Trevon Gross, are charged in a six-count Indictment, although both Defendants are not charged in every count. You will have a copy of the Indictment with you in the jury room and can read each count in its entirety. I am going to provide only a brief summary now:

Count One charges Yuri Lebedev and Trevon Gross with conspiracy. The conspiracy charged in Count ~~Three~~One has four objects or goals that are described in the Indictment.

Count Two charges Yuri Lebedev with making and attempting to make corrupt payments with the intent to influence an officer of a financial institution.

Count Three charges Trevon Gross with accepting corrupt payments as an officer of a financial institution with the intent to be influenced.

Count Four charges Yuri Lebedev with conspiracy to commit wire fraud and bank fraud.

Count Five charges Yuri Lebedev with wire fraud.

Count Six charges Yuri Lebedev with bank fraud.

Instruction No. 10: Consider Each Defendant Separately

The Indictment names as Defendants Yuri Lebedev and Trevon Gross, who are on trial together. In reaching a verdict, however, you must bear in mind that guilt is individual. Your verdict as to each Defendant must be determined separately with respect to him solely on the evidence, or lack of evidence, presented against him without regard to the guilt or innocence of anyone else. Whether you find a particular Defendant guilty or not guilty as to one offense should have no bearing on your verdict as to the other offenses charged.

In addition, some of the evidence in this case was limited to one Defendant. Let me emphasize that any evidence admitted solely against one Defendant may be considered only as against that Defendant and may not in any respect enter into your deliberations as to the other Defendant.

Instruction No. 11: Multiple Counts, Multiple Defendants

As I mentioned, the Indictment contains six counts and charges two Defendants. Both Defendants are not named in every count.

You must, as a matter of law, consider each count of the Indictment and each Defendant's involvement in that count separately. You must return a separate verdict on each Defendant for each count in which he is charged.

In reaching your verdict, bear in mind again that guilt is personal and individual. Your verdict of guilty or not guilty must be based solely upon the evidence about each Defendant. The case against each Defendant, on each count in which he is charged, stands or falls upon the proof or lack of proof against that Defendant alone, and your verdict as to any Defendant on any count should not control your decision as to any other Defendant or any other count.

Instruction No. 12: Counts One through Three: Overview

I will now instruct you on the elements of the crimes with which the Defendants are charged in the Indictment. I will first instruct you on the elements of the corrupt payment offenses charged in Counts Two and Three, which are two of the objects, or goals, of the conspiracy offense charged in Count One. I will then instruct you on the elements of conspiracy.

Instruction No. 13: Count Two: Making Corrupt Payments to an Officer of a Financial Institution

Count Two charges Yuri Lebedev with making or offering to make corrupt payments to an officer of a financial institution, specifically the Defendant Trevon Gross, with the intent to influence him in connection with the business of a financial institution, specifically HOPE Federal Credit Union. In order to find Yuri Lebedev guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First, that Trevon Gross was an officer or director or employee of a financial institution as that term is defined under federal law;

Second, that the Defendant gave or agreed to give or offered or promised something of value to Trevon Gross;

Third, that the Defendant acted corruptly and with the intent to influence or reward Trevon Gross's decision in connection with any business or transaction of HOPE Federal Credit Union; and

Fourth, that the thing of value paid by the Defendant had a value greater than $1,000.

Instruction No. 14: Count Two, First Element:
Recipient Was an Officer of a Financial Institution

The first element the Government must prove beyond a reasonable doubt is that, at the time of the events alleged in the Indictment, Trevon Gross was an officer or director or employee of a financial institution. In order to satisfy this element, the Government must prove that HOPE Federal Credit Union was a credit union with accounts insured by the National Credit Union Share Insurance Fund, and that Trevon Gross was an officer or director or employee of HOPE Federal Credit Union.

Instruction No. 15: Count Two, Second Element: Giving Something of Value

The second element the Government must prove beyond a reasonable doubt is that Yuri Lebedev gave or agreed to give or offered or promised something of value to Trevon Gross as alleged in the Indictment.

The law makes no distinction between offering, promising, or actually giving a corrupt payment. The mere offer or promise of such a payment is just as much a violation of the statute as the actual giving of one.

It is not necessary that the Government prove that the payment was made directly to Trevon Gross. If the payment was made corruptly, or was offered or promised to be made corruptly, to a third party, such as another person or entity, with intent to influence or reward Trevon Gross, that is sufficient to satisfy this element.

Instruction No. 16: Count Two, Third Element:
Corrupt Intent to Influence Business of the Financial Institution

The third element the Government must prove beyond a reasonable doubt is not just that Yuri Lebedev gave or agreed to give or offered or promised something of value to Trevon Gross, but that he did so knowingly and corruptly and with the intent to influence or reward Trevon Gross in connection with any business or transaction of HOPE Federal Credit Union.

To act corruptly means to act voluntarily and deliberately with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. This involves conscious wrongdoing, or as it sometimes has been expressed, a bad or evil state of mind. The motive to act corruptly is ordinarily a hope or expectation of either financial gain or some other benefit to oneself or some profit or benefit to another.

The relevant question for your consideration with respect to Count Two is Yuri Lebedev's intent, not Trevon Gross's intent. In order to find Yuri Lebedev guilty, the Government does not have to prove that Trevon Gross had a corrupt intent, corruptly accepted any payment, or that a payment corruptly influenced any business or transaction of HOPE Federal Credit Union. Nor is it necessary for the Government to prove that Trevon Gross had the authority to perform the act that Yuri Lebedev allegedly corruptly sought for him to undertake. Also, if you find that Yuri Lebedev acted with the intent to reward Trevon Gross for a decision already made, it does not matter that the payment was not made or offered until after the decision was made.

Instruction No. 17: Count Two, Fourth Element: Value Greater Than $1,000

The fourth element the Government must prove beyond a reasonable doubt is that the thing of value given or agreed to or offered or promised by Yuri Lebedev had a value greater than $1,000. The Government need not prove the exact value of the thing of value as long as there is proof beyond a reasonable doubt that the value exceeded $1,000.

Instruction No. 18: Count Three: Accepting Corrupt Payments as an Officer of a Financial Institution

Count Three of the Indictment charges Trevon Gross with corruptly soliciting, demanding for the benefit of any person, accepting, or agreeing to accept payments as an officer of a financial institution with intent to be influenced or rewarded. In order to find Trevon Gross guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First, that Trevon Gross was an officer or director or employee of a financial institution;

Second, that Trevon Gross solicited, demanded, accepted, or agreed to accept something of value, either for his own benefit or the benefit of another;

Third, that Trevon Gross did so knowingly and corruptly, and with the intent to be influenced or rewarded in connection with any business or transaction of HOPE Federal Credit Union; and

Fourth, that the thing of value solicited, demanded, accepted or agreed to accept, had a value greater than $1,000.

I have already instructed you on the meaning of these elements in discussing Count Two, and you should follow those instructions with respect to this Count.

With respect to the third element – corrupt intent – remember that to act corruptly means to act voluntarily and deliberately with the bad purpose of accomplishing either an unlawful end or result, or a lawful end or result by some unlawful method or means. Here, it is Trevon Gross's intent in accepting the payments that is the relevant question, not the intent of the person or persons offering or making the payments. Even if you find that payments were made to

Trevon Gross with a corrupt intent, you may not find Trevon Gross guilty unless you find that he also acted with a corrupt intent.

Remember that it is Trevon Gross's intent to be influenced or rewarded that matters, not the subsequent actions he undertook concerning HOPE Federal Credit Union or the subsequent actions of HOPE Federal Credit Union. In order to find Trevon Gross guilty, the Government does not have to prove that the payment or offer of payment actually influenced any of Trevon Gross's decisions concerning HOPE Federal Credit Union. Also, if you find that Trevon Gross acted with the intent to be rewarded for a decision already made, it does not matter that the payment was not made or offered until after the decision was made.

Also remember that in order to find Trevon Gross guilty, the Government does not have to prove that Trevon Gross received the payments directly. If Trevon Gross corruptly solicited, demanded, accepted, or agreed to accept a payment on behalf of another person or entity with the intent to be influenced or rewarded, that is sufficient to find him guilty.

Instruction No. 19: Bona Fide Payments

The corrupt payments statute charged in Counts Two and Three does not criminalize legitimate commercial and business practices. It only applies to payments made with a corrupt intent. Thus, the statute does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. Bona fide means in good faith or without deceit or fraud. If you find that either of the Defendants made or accepted, or offered or agreed to make or accept, bona fide payments without corrupt intent, you must find that Defendant not guilty on the count you are considering.

Instruction No. 20: Count One: Overview

I will now turn to the conspiracy offense charged in Count One. Count One charges Yuri Lebedev and Trevon Gross with conspiring to violate certain federal laws.

A conspiracy is a kind of criminal partnership—an agreement or understanding between two or more persons to accomplish some unlawful purpose. The crime of conspiracy to violate federal law is an independent offense from the actual violation of any specific federal law. Indeed, you may find either of the Defendants guilty of conspiring to violate federal law even if you find that the crimes which were the objects of the conspiracy were never actually committed.

Count One charges Yuri Lebedev and Trevon Gross with conspiring with others, from in or about April 2014 to in or about 2015, to achieve four unlawful objectives in an effort to further the operations of Coin.mx or the Collectables Club: (1) to make corrupt payments to Trevon Gross with the intent to influence Trevon Gross in connection with the business of HOPE FCU; (2) to have Trevon Gross receive or agree to receive corrupt payments with the intent to be influenced in connection with the business of HOPE FCU; (3) to obstruct an examination of HOPE FCU by the NCUA; and (4) to make false statements to the NCUA in connection with the NCUA's examinations of HOPE FCU.

As is clear from the Indictment, the Government has charged the Defendants with what is called a "multi-object conspiracy," that is, a conspiracy with more than one objective.

The first object of the alleged conspiracy was to make corrupt payments to Trevon Gross with the intent to influence Trevon Gross in the business of HOPE Federal Credit Union, in violation of Title 18, United States Code, Section 215(a)(1).

The second object of the alleged conspiracy was to have Trevon Gross receive or agree to receive the corrupt payments with the intent to be influenced in the business of HOPE Federal Credit Union, in violation of Title 18, United States Code, Section 215(a)(2).

The third object of the alleged conspiracy was to obstruct an examination of HOPE Federal Credit Union by the National Credit Union Administration (NCUA), in violation of Title 18, United States Code, Section 1517.

The fourth object of the alleged conspiracy was to make false statements to the NCUA, in violation of Title 18, United States Code, Section 1001.

In order to find Yuri Lebedev or Trevon Gross guilty on Count One, you must find that the Government has proven each of the following elements beyond a reasonable doubt as to that Defendant:

First, that there was an agreement between two or more persons to commit one or more of the crimes that were the objects of the conspiracy charged in the Indictment;

Second, that the Defendant you are considering knowingly and willfully became a member of the conspiracy charged; and

Third, that any one of the conspirators knowingly committed at least one overt act in furtherance of the conspiracy.

I will now discuss each of these elements in more detail.

Instruction No. 21: Count One, First Element:
Existence of the Conspiracy

The first element which the Government must prove beyond a reasonable is that two or more persons entered the unlawful agreement charged in Count One of the Indictment – that is, that two or more persons agreed to commit at least one of the four criminal objects charged in the Indictment.

As I previously stated, a conspiracy is an agreement or understanding between two or more persons to accomplish some unlawful purpose. To establish the existence of a conspiracy, however, the Government is not required to show that two or more people sat around a table and entered into a formal contract. It is sufficient if two or more persons, in any manner, came to a common understanding to violate the law. Express language or specific words are not required to indicate agreement to or membership in a conspiracy. As I already told you, it is not necessary that a conspiracy actually succeed in its purpose for you to conclude that it existed. Nevertheless, in determining whether two or more individuals have agreed to commit a crime, you may look at all of their conduct – including any acts done to carry out an apparent criminal purpose – and determine whether that conduct reflects an intent to carry out a common criminal purpose. The old saying "actions speak louder than words" applies here.

If, upon consideration of all the evidence, direct and circumstantial, you find that the Government has proven beyond a reasonable doubt that there was a meeting of the minds or agreement between two or more persons to commit one or more of the crimes that are the objects of the conspiracy charged in Count One, then proof of the existence of a conspiracy is established. Mere discussions about crimes or mere knowledge of crimes without an agreement to commit them is not a conspiracy. Further, an agreement to achieve a lawful goal is not the same as a criminal conspiracy – two or more individuals must have agreed to commit a crime.

It is also not necessary for the Government to prove that two or more individuals agreed to commit all four criminal objects of the conspiracy as charged in Count One of the Indictment. An agreement to accomplish any one of the alleged objects is sufficient. But if you do not unanimously find beyond a reasonable doubt that all of the objects of the conspiracy were proven, you must be unanimous as to which object you do find proven. In other words, to return a verdict of guilty on Count One, you must reach agreement as to at least one object of the alleged conspiracy and find that the defendant in question knowingly and intentionally entered into an agreement to achieve that unlawful objective.

I have instructed you on the elements of the substantive bribery offenses charged in Counts Two and Three, which are the first two alleged objects of the conspiracy charged in Count One. You should follow those instructions here.

I will now instruct you on the elements of the substantive offenses that are the third and fourth objects of the alleged conspiracy.

Instruction No. 22: Count One, First Element, Third Object:
Obstruction of an Examination of a Financial Institution

The third object of the conspiracy charged in Count One is to corruptly obstruct an examination of a financial institution, specifically, HOPE Federal Credit Union, by an agency of the United States with jurisdiction to conduct an examination, specifically, the National Credit Union Administration (NCUA), in violation of Title 18, United States Code, Section 1517. This crime has three elements:

First, that on or about the dates set forth in the Indictment, an agency of the United States with jurisdiction to conduct an examination, in this case, the NCUA, was in fact conducting an examination of a financial institution, specifically HOPE Federal Credit Union. In order to establish that HOPE Federal Credit Union was a financial institution, the Government must prove that HOPE Federal Credit Union was a credit union with accounts insured by the National Credit Union Share Insurance Fund. I instruct you that the NCUA is an agency of the United States with jurisdiction to conduct an examination of a credit union with accounts insured by the National Credit Union Share Insurance Fund.

Second, that a Defendant or a co-conspirator knew that the NCUA was conducting an examination of HOPE Federal Credit Union; and

Third, that a Defendant or a co-conspirator corruptly obstructed or attempted to obstruct the NCUA's examination.

The success of the endeavor to obstruct the NCUA's examination is not an element of the crime. Thus, it is sufficient if you find that a Defendant or a co-conspirator corruptly made any effort or did any act for the purpose of obstructing the NCUA examination, even if the examination was not in fact obstructed. The word "corruptly" as used in the statute means simply having the improper motive or purpose of obstructing the examination.

Instruction No. 23: Count One, First Element, Fourth Object: False Statements to the NCUA

The fourth object of the conspiracy charged in Count One is knowingly and willfully making materially false statements to the executive branch of the Government of the United States, specifically, the National Credit Union Administration (NCUA), in violation of Title 18, United States Code, Section 1001. This crime has five elements:

First, that on or about the dates set forth in the Indictment, a Defendant or a co-conspirator did one or more of the following:

(a) Falsify, conceal or cover up a fact. As used in the statute, the term “falsify” means to make an untrue statement which is untrue at the time made and is known to be untrue at the time made. To “conceal” means to withhold from another. It requires some act to prevent detection of some fact the Defendant was required to reveal. And to “cover up” means to hide from another. The Government must prove, beyond a reasonable doubt, that the Defendant had a legal duty to disclose the fact concealed or covered up.

(b) Make a statement or representation. In this regard, the government need not prove that the Defendants or a co-conspirator physically made or otherwise personally prepared the statement in question. It is sufficient if the Defendants or a co-conspirator caused the statement to have been made. Under this statute, there is no distinction between written and oral statements.

(c) Use a writing or document. In this regard, the Government need not prove that the Defendants or a co-conspirator personally prepared the writing or document. It is sufficient to satisfy this element if you find that the Defendants or a co-conspirator caused the writing or document to be used.

Second, if a Defendant or a co-conspirator did one or more of the acts in the first element, that the act or acts were done as follows:

(a) Falsify or conceal or cover up by trick, scheme or device. This language is almost self-explanatory. A scheme is a plan for the accomplishment of an object. A trick or device is a deceptive act or strategy calculated to deceive other persons.

(b) Make a statement or representation that was false, fictitious or fraudulent.

(c) Use a writing or document containing a statement or entry that was false, fictitious or fraudulent.

A statement or representation or entry is “false” or “fictitious” if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. A statement or representation or entry is “fraudulent” if it was untrue when made and was made or caused to be made with the intent to deceive the NCUA.

Third, that the fact falsified or concealed or covered up, or the false, fictitious, or fraudulent statement or representation, or the false, fictitious, or fraudulent statement or entry contained in a writing or document, was material. A fact or statement or representation or entry is “material” if it has a natural tendency to influence or is capable of influencing the NCUA’s decisions or activities. However, proof of actual reliance on the fact or statement or representation or entry by the NCUA is not required.

Fourth, that a Defendant or a co-conspirator acted knowingly and willfully. An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly or accidentally.

An act is done willfully if it is done with an intention to do something the law forbids, a bad purpose to disobey the law, and, only with respect to concealment, with specific intent to fail to do something the law requires to be done.

Fifth, and finally, that the falsification, concealment, or cover-up was with respect to a matter within the jurisdiction of the Government of the United States. I charge you that the NCUA is a department of the United States government. To be within the jurisdiction of the Government of the United States means that the statement must concern an authorized function of that federal department or agency, in this case, the NCUA. It is not necessary for the Government to prove that the Defendants had actual knowledge that the false statement was to be utilized in a matter that was within the jurisdiction of the NCUA. It is sufficient to satisfy this element if you find that the false statement was made with regard to a matter within the jurisdiction of the NCUA.

I instruct you that under the false statements statute, it is not necessary for the Government to prove that the NCUA was, in fact, misled as a result of the action of the Defendants. It does not matter that the NCUA was not misled, or even that it knew of the misleading or deceptive act, should you find that the act occurred. These circumstances would not excuse or justify a concealment undertaken, or a false, fictitious or fraudulent statement made, or a false writing or document submitted, willfully and knowingly about a matter within the jurisdiction of the NCUA.

Instruction No. 24: Count One, Second Element:
Participation in the Conspiracy

If you find the Government has proven beyond a reasonable doubt that the conspiracy alleged in Count One existed, you must then determine whether the Government has proven beyond a reasonable doubt that Yuri Lebedev and Trevon Gross knowingly and willfully joined that conspiracy.

In determining whether either Defendant became a member of the conspiracy, you must determine not only whether he participated in it, but also whether he did so with knowledge of its illegal objective. Did the specific Defendant join the conspiracy with an awareness of its aim and purpose and with the specific intent of furthering that purpose? Knowledge is a matter of inference from facts proved. To have guilty knowledge, a Defendant need not know the full extent of the conspiracy or even who all the co-conspirators are. Similarly, a Defendant need not know all of the activities of the conspiracy. Indeed, a single act may be enough to bring one within the membership of the conspiracy, provided that the Defendant was aware of the conspiracy and knowingly associated himself with its criminal aims. It does not matter whether a given Defendant's role in the conspiracy may have been more limited than or different in nature from the roles of his co-conspirators, provided he was himself a participant.

Of course, mere presence at a scene of a crime, or mere association with one or more members of a conspiracy, even coupled with awareness that those other people are acting unlawfully, does not make a Defendant a member of the conspiracy. Further, the fact that the acts of a Defendant, without knowledge, merely happen to further the purposes or objectives of the conspiracy, does not make the Defendant a member of the conspiracy. Nor is knowledge of or acquiescence in a conspiracy without participation sufficient. As I have stressed, what is necessary is that the Defendant in question participate in a conspiracy with knowledge of its unlawful purpose and with intent to aid in the accomplishment of that end.

It is also not necessary that the Defendant receive or even anticipate any financial benefit from participating in the conspiracy as long as he participated in it in the way I have explained. That said, while proof of a financial interest in the outcome of a scheme is not essential, if you find that the Defendant had such an interest, that is a factor which you may properly consider in determining whether or not he was a member of the conspiracy charged in the Indictment.

Finally, as I have said before, you must separately determine, as to each Defendant, whether he was a member of the conspiracy.

Instruction No. 25: Count One, Third Element:
Overt Act

Let me now turn to the third element of the conspiracy alleged in Count One, the requirement of an overt act.

Count One requires the Government to prove beyond a reasonable doubt that at least one co-conspirator knowingly committed at least one overt act in furtherance of the conspiracy. The overt act element requires the Government to show something more than mere agreement; it must show that some overt step or action was taken by at least one of the conspirators in furtherance of the conspiracy. In other words, the Government must show that the agreement went beyond the mere talking stage. It must show that at least one of the conspirators actually did something in furtherance of the conspiracy.

In order for the Government to satisfy the overt act requirement, it is not necessary for the Government to prove any of the specific overt acts alleged was committed. Nor does the Government have to prove that it was Yuri Lebedev or Trevon Gross who committed the overt act. It is sufficient for the Government to show that any of the members of the conspiracy knowingly committed some overt act in furtherance of the conspiracy. Further, the overt act need not be one that is alleged in the Indictment. Rather it can be any overt act that is substantially similar to those acts alleged in the Indictment, if you are convinced beyond a reasonable doubt that the act occurred while the conspiracy was still in existence and that it was done in furtherance of the conspiracy as described in the Indictment. In addition, you need not be unanimous as to which overt act you find to have been committed. It is sufficient as long as all of you find that at least one overt act was committed by one of the conspirators in furtherance of the conspiracy.

Finally, you should bear in mind that the overt act, standing alone, may be an innocent, lawful act. Frequently, however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding, or assisting the conspiratorial scheme.

Instruction No. 26: Count One: Liability for Acts and Declarations of Co-Conspirators

When people enter into a conspiracy to accomplish an unlawful end, they become agents or partners of one another in carrying out the conspiracy. Accordingly, the reasonably foreseeable acts, declarations, statements, and omissions of any member of the conspiracy and in furtherance of the common purpose of the conspiracy are deemed under the law to be the acts of all of the members. All of the members are responsible for such acts, declarations, statements, and omissions.

If you find beyond a reasonable doubt that the specific Defendant you are considering knowingly and willfully participated in the conspiracy charged in the Indictment, then any acts done or statements made in furtherance of the conspiracy by persons also found by you to have been members of that conspiracy may be considered against that Defendant. This is so even if such acts were done and statements were made in the Defendant's absence and without his knowledge. However, before you may consider the statements or acts of a co-conspirator in deciding the issue of a Defendant's guilt, you must first determine that the acts and statements were made during the existence and in furtherance of the unlawful scheme. If the acts were done or the statements made by someone whom you do not find to have been a member of the conspiracy at the time of the acts or statements, or if they were not done or said in furtherance of the conspiracy, they may be considered by you as evidence only against the member who said or did that.

Instruction No. 27: Count One: Withdrawal from the Conspiracy

~~The~~A Defendant has raised the defense that he was not a member of the conspiracy because he withdrew from the conspiracy prior to the commission of the first overt act in furtherance of the conspiracy. Once a person joins a conspiracy, that person remains a member until he withdraws from it. Any withdrawal must be complete and it must be done in good faith. But it is a defense to the charge of conspiracy that ~~a Defendant~~the defendant withdrew from the conspiracy before the commission of the first overt act in furtherance of the conspiracy. A person can withdraw from a conspiracy by taking some affirmative steps to terminate or abandon his participation in, and efforts to promote, the conspiracy. In order to withdraw from the conspiracy, ~~the Defendant~~a defendant must take some definite, decisive, and affirmative action to disavow himself from the conspiracy or to defeat the goal or purpose of the conspiracy.

Merely stopping activities or cooperation with the conspiracy or merely being inactive for a period of time is not sufficient to constitute the defense of withdrawal.

In deciding if ~~a~~the Defendant took a step to disavow or defeat the conspiracy, you may consider whether he told others in the conspiracy that his participation had ended, whether the Defendant took steps to correct prior assistance to the group, and whether he attempted to remedy any past act or attempted to prevent any further progress of the conspiracy.

It is not sufficient to constitute the defense of withdrawal for a defendant to sever ties with some but not all members of the conspiracy. Furthermore, ~~the~~a defendant must not take any subsequent acts to promote the conspiracy, such as steps to conceal the conspiracy, and must not receive any additional benefits from the conspiracy.

The Defendant has the burden of proving that he withdrew from the conspiracy by a preponderance of the evidence. To prove something by a preponderance of the evidence means to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more convincing. In determining whether ~~the Defendant~~a defendant has proven that he withdrew from the conspiracy, you may consider all relevant, admissible evidence. If the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve this question against the Defendant. It is important to remember, however, that the fact that ~~the~~a Defendant has raised this defense does not relieve the Government of its burden of proving that there was an agreement, that the Defendant knowingly and voluntarily joined the conspiracy, and that an overt act was committed in furtherance of the conspiracy. Those are things that the Government still must prove beyond a reasonable doubt in order for you to convict the Defendant of the crime of conspiracy.

Instruction No. 28: Count One: Multiple Conspiracies

In this case, the Defendants contend that, as to Count One, the Government's proof fails to show the existence of only one overall conspiracy. Rather, they claim that there were actually several separate and independent conspiracies with various groups of members.

Whether there existed a single unlawful agreement, or many such agreements, or indeed, no agreement at all, is a question of fact for you, the jury, to determine in accordance with the instructions I am about to give you.

When two or more people join together to further one common unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

Proof of several separate and independent conspiracies is not proof of the single, overall conspiracy charged in Count One, unless one of the conspiracies proved happens to be the single conspiracy described in Count One of the Indictment.

You may find that there was a single conspiracy despite the fact that there were changes in personnel by additions of new members or loss of old members, or changes in activities, or both, so long as you find that some of the co-conspirators continued to act for the entire duration of the conspiracy for the purposes charged in Count One of the Indictment. The fact that the members of a conspiracy are not always identical does not necessarily imply that separate conspiracies exist.

On the other hand, if you find that the conspiracy charged in Count One did not exist, you cannot find any Defendant guilty of the single conspiracy charged in Count One. This is so even if you find that some conspiracy other than the one charged in Count One existed, even though the purposes of both conspiracies may have been the same and even though there may have been some overlap in membership.

Similarly, if you find that a particular Defendant was a member of another conspiracy, and not the one charged in Count One, then you must acquit the Defendant of the conspiracy charge in Count One.

Therefore, what you must do is determine whether the conspiracy charged in Count One existed. If it did, you then must determine the nature of the conspiracy and who were its members.

Instruction No. 29: Evidence You May Consider

You have seen and heard evidence that sometime after a meeting involving Trevon Gross, Yuri Lebedev, and other members of the Collectables Club, held on or about November 22, 2014, there was a falling-out between Trevon Gross on one hand and the Collectables Club members on the other hand. It is up to you to determine, based on all the evidence, when precisely that falling-out occurred.

You may consider, against both Yuri Lebedev and Trevon Gross, evidence of acts and statements by the defendants and individuals affiliated with HOPE FCU, the Collectables Club, and Kapcharge, that occurred before the date of the falling out between Trevon Gross and the Collectables Club. Evidence of acts and statements by various individuals that occurred after the date of the falling-out between Trevon Gross and the Collectables Club may be considered in the following ways:

Acts and statements by the Defendants and members of the Collectables Club regarding the November 22 meeting or the relationship between Trevon Gross and the Collectables Club, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club, may be considered against both Yuri Lebedev and Trevon Gross.

Acts and statements by Yuri Lebedev and other members of the Collectables Club regarding contacting the NCUA about HOPE FCU, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club, may be considered against both Yuri Lebedev and Trevon Gross.

Acts and statements by Yuri Lebedev and other members of the Collectables Club regarding efforts to take control of credit unions other than HOPE Federal Credit Union and starting a new credit union of their own, including eCommerce PMA Federal Credit Union, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club, (a) may be considered against Yuri Lebedev only for whether the conspiracy charged in Count One existed and who its members were, but not for whether Yuri Lebedev knowingly participated in that conspiracy, and (b) may not be considered against Trevon Gross.

Acts and statements by Trevon Gross; Charles Blue and other individuals affiliated with HOPE FCU; and Mark Francis, Shoula Cohen, and other individuals affiliated with Kapcharge, that occurred after the date of the falling-out between Trevon Gross and the Collectables Club (a) may be considered against Trevon Gross, and (b) may be considered against Yuri Lebedev only for whether the conspiracy charged in Count One existed and who its members were, but not for whether Yuri Lebedev knowingly participated in that conspiracy.

Instruction No. 30: Counts Four through Six: Overview

Count Four alleges that Yuri Lebedev conspired to commit wire and bank fraud. Counts Five and Six allege that Yuri Lebedev committed the substantive crimes of wire fraud and bank fraud, respectively. Trevon Gross is not charged in Counts Four through Six.

I have already explained the elements of conspiracy when I discussed Count One and you should follow those instructions with respect to the conspiracy charged in Count Four with one exception. Unlike the conspiracy charged in Count One you do not have to find that any overt act was committed by any conspirator in furtherance of the conspiracy charged in Count Four. In other words, the law does not require the Government to prove that any overt act was committed in order to prove a conspiracy to commit wire fraud or bank fraud. I remind you, however, that if you do not unanimously find that both wire fraud and bank fraud were objects of the conspiracy, in order to convict Yuri Lebedev on Count Four you must unanimously agree that either wire fraud or bank fraud was an object of the conspiracy.

I will now explain the elements of wire fraud and bank fraud, which are the two objects of the conspiracy charged in Count Four.

Instruction No. 31: Count Five: Wire Fraud

Count Five charges Yuri Lebedev with wire fraud. In order to find the Defendant guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First: That the scheme or artifice to defraud others of money or property by materially false and fraudulent pretenses which is charged in Count Five of the Indictment existed in or about the times alleged in the Indictment ;

Second: That the Defendant knowingly, willfully, and with the specific intent to defraud, participated in the scheme or artifice, with knowledge of its fraudulent nature; and

Third: That in execution of the scheme, the Defendant used or caused the use by others of interstate or international wires.

Instruction No. 32: Count Five, First Element:
Scheme or Artifice to Defraud

The first element the Government must prove beyond a reasonable doubt is the existence of a scheme or artifice to defraud others of money or property by means of false or fraudulent pretenses, representations, or promises. I will now define some of these terms for you.

A "scheme or artifice" is simply a plan that is designed to accomplish an objective.

"Fraud" is a broad term. It includes all the possible means by which a person seeks to gain some unfair advantage over another by false representations, false suggestion, false pretenses, concealment of the truth, or deliberate disregard for the truth. Thus, a "scheme or artifice to defraud" is any plan, device, or course of action to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises. It is a plan to deprive another of money or property by trick, deceit, or swindle. Here, the Government alleges that the scheme to defraud was carried out by making false and fraudulent statements and representations to financial institutions.

A statement or representation is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it was false and the Defendant made it with the intent to deceive.

The false or fraudulent representation or concealment in a wire fraud scheme must relate to a material fact or matter. A material fact is one you would reasonably expect to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must also determine whether that statement was one that a reasonable person would have considered important in making his or her decision.

To find an untruthful statement or representation material, you must conclude that the statement or representation was one that was capable of influencing the decision-maker to whom it was directed—here, a financial institution—and was intended by the Defendant to influence the financial institution's decision. It does not matter whether the financial institution actually relied on the misrepresentation. However, the misrepresentation had to be capable of influencing the financial institution, and intended by the Defendant to influence the financial institution, whether it influenced the financial institution or not.

The Government is not required to establish that anyone actually relied on any false or fraudulent statement or representation. Rather the statement or representation merely had to be capable of influencing the financial institution; whether the financial institution was actually influenced or not is of no moment.

In order to establish a scheme to defraud, the Government must also prove that the alleged scheme contemplated depriving the financial institution of money or property. In this regard, a person is not deprived of money or property only when someone directly takes money or property from that person, although that is obviously one way that a person or entity can be so deprived.

A person can also be deprived of money or property when that person is provided false or fraudulent information that, if believed, would prevent the person from being able to make informed economic decisions about what to do with his or her money or property. In other words, a person is deprived of money or property when the person is deprived of the right to control that money or property.

Because the Government need only show that a scheme to defraud existed, not that it succeeded, it is not necessary for the Government to prove that the financial institutions actually lost money or property as a result of the scheme. For you to find Yuri Lebedev guilty, however, the Government must prove that such a loss was contemplated by the Defendant. That is, to carry its burden, the Government must prove that the Defendant contemplated and intended doing harm to a victim—that he intended to do something more than merely deceive the financial institutions.

In considering whether contemplation of the required loss was proved by the Government, keep in mind that the loss of the right to control money or property constitutes deprivation of money or property only when the scheme, if it were to succeed, would result in economic harm to the victim. If all the Government proves is that under the scheme, it was contemplated that the financial institutions would enter into transactions they would otherwise not have entered into, without proving that the financial institutions would thereby have suffered economic harm, then the Government will not have met its burden of proof.

A scheme to defraud need not be shown by direct evidence, but may be established by all the circumstances and facts in the case.

Finally, it does not matter whether the financial institutions might have discovered the fraud had they probed further. If you find that a scheme existed, it is irrelevant whether you believe that the victim was careless, gullible, or even negligent.

Instruction No. ~~32~~33: Count Five, Second Element:
Knowledge and Intent to Defraud

The second element that the Government must prove beyond a reasonable doubt is that Yuri Lebedev participated in a scheme to defraud knowingly, willfully, and with specific intent to defraud.

To participate in a scheme means to engage in it, by taking some affirmative step to help it succeed.

I have already instructed you on the meaning of "knowingly" and "willfully" and you should follow those instructions here.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial harm or deprivation of property to another. The Government need not prove that any intended victim was actually harmed; only that such harm was contemplated.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one's state of mind.

Science has not yet invented a way for us to look inside someone's head to see what he is thinking and intending and knowing. Direct proof of knowledge, willfulness, and fraudulent intent is almost never available. Rarely is it the case that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, words, conduct, and acts, taken in light of all the surrounding circumstances that are disclosed by the evidence, together with the rational or logical inferences that may be drawn from them.

What is referred to as drawing inferences from circumstantial evidence is no different from what people normally mean when they say, "use your common sense." Using your common sense means that, when you come to decide whether the Defendant possessed or lacked an intent to defraud, you need not limit yourself to just what the Defendant said, but you may also look at what the Defendant did and what others did in relation to the Defendant and, in general, to everything that occurred.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime must be proven beyond a reasonable doubt.

In order to sustain the charges against Yuri Lebedev, the Government must prove beyond a reasonable doubt that the Defendant participated in the alleged scheme with an understanding of its fraudulent or deceptive character and with the intent to help it succeed.

That said, there are certain things that the Government need not prove in order to meet its burden. It need not prove that the Defendant participated in or even knew about all of the operations of the scheme. It need not prove that the Defendant originated or invented the scheme, or participated in it from its inception. A person who begins to participate in a scheme after it begins is just as guilty as a person who participates from the beginning, as long as the person who joins at a later point becomes aware of the scheme's general purpose and operation and acts intentionally to further its unlawful goal or goals. Finally, the Government need not prove that the Defendant participated in the scheme to the same degree as other participants.

Instruction No. ~~33~~34: Count Five, Third Element: Use of Interstate Wires

The third element the Government must prove beyond a reasonable doubt is the use of an interstate or international wire communication in furtherance of the scheme to defraud. The wire communication must pass between two or more states as, for example, an email sent from New York to Florida, or it must pass between the United States and a foreign country as, for example, an email sent from New York to London. A wire communication also includes a wire transfer of funds between banks in different states or between a bank in the United States and a bank in a foreign country.

The use of the wires need not itself be a fraudulent representation. It must, however, further or assist in the carrying out of the scheme to defraud. It is not necessary for Yuri Lebedev to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which Yuri Lebedev is accused of participating.

In this regard, it is sufficient to establish this element of the crime if you find that Yuri Lebedev caused the wires to be used by others. This does not mean that the Defendant must specifically have authorized others to make the telephone call, send the email, or transfer the funds. When one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even though not actually intended, then a person "causes" the wires to be used.

Instruction No. ~~34~~35: Count Six: Bank Fraud

Count Six charges Yuri Lebedev with bank fraud. In order to find the Defendant guilty of this crime, the Government must prove the following elements beyond a reasonable doubt:

First, that there was a scheme to obtain money or property owned by or under the custody or control of a bank by means of materially false or fraudulent pretenses, representations or promises as charged in the Indictment;

Second, that the Defendant executed or attempted to execute the scheme with the intent to obtain money or property owned or under the custody or control of the bank; and

Third, that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

Instruction No. 3536: Count Six, First Element:
Scheme to Obtain Money or Property Under Bank's Control

The first element that the Government must prove beyond a reasonable doubt is that there was a scheme to obtain money or property owned by or under the custody andor control of a bank by means of false or fraudulent pretenses, representations or promises as described in the Indictment.

I have instructed you on the meaning of "scheme" and you should follow that instruction here.

A representation is fraudulent if it was falsely made with the intent to deceive. Deceitful statements of half-truth, the concealment of material facts, and the expression of an opinion not honestly entertained may constitute false or fraudulent representations under the statute. The deception need not be premised upon spoken or written words alone, however. The arrangement of the words, or the circumstances in which they are used may convey a false and deceptive appearance. If there is intentional deception, the manner in which it is accomplished does not matter.

In addition, the fraudulent representation must relate to a material fact or matter. I have previously instructed you on the meaning of "material" and you should follow that instruction here.

Instruction No. ~~36~~37: Count Six, Second Element: Intent to Obtain Money or Property

The second element the Government must prove beyond a reasonable doubt is that the Defendant executed or attempted to execute the scheme knowingly and willfully and with the intent to obtain money or funds owned by or under the custody or control of the bank.

I have already instructed you on the meaning of "knowingly" and "willfully" and you should follow those instructions here.

I remind you that the ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime charged must be established beyond a reasonable doubt.

Instruction No. ~~37~~38 Count Six, Third Element: FDIC Insured

The last element the Government must prove beyond a reasonable doubt is that the relevant bank was insured by the Federal Deposit Insurance Corporation at the time of the execution of the alleged scheme to defraud.

As to this last element there is no issue since a stipulation was entered into and read to you in which the parties agree that the relevant banks were insured by the Federal Deposit Insurance Corporation at the time in question.

Furthermore, it is not necessary for the Government to prove that the Defendant knew the identity of a particular bank or that the Defendant knew that the bank was insured by the Federal Deposit Insurance Corporation. It must only prove that the Defendant intended to obtain money or funds owned by or under the custody or control of a bank by means of false or fraudulent pretenses, representations or promises.

OTHER INSTRUCTIONS

Instruction No. ~~38~~39: Conscious Avoidance

This concludes my instructions on the crimes charged in the Indictment, but before I move onto my remaining instructions, I want to now instruct you on the concept of conscious avoidance.

I instructed that in order to find the Defendants guilty on the counts in which they are charged, you must find that they acted knowingly in various respects. In determining whether a particular Defendant acted knowingly, you may consider whether that Defendant deliberately closed his eyes to what otherwise would have been obvious to him. That is what the phrase "conscious avoidance" refers to.

As I told you before, acts done knowingly must be a product of a person's conscious intention. They cannot be the result of carelessness, negligence, or foolishness. A Defendant may not, however, willfully and intentionally remain ignorant of a fact material and important to his own conduct in order to escape the consequences of criminal law. We refer to this notion of intentionally blinding yourself to what is staring you in the face as conscious avoidance.

An argument by the Government of conscious avoidance is not a substitute for proof; it is simply another factor that you, the jury, may consider in deciding what a Defendant knew. Thus, if you find beyond a reasonable doubt that a particular Defendant was aware that there was a high probability that a fact was so, but that the Defendant deliberately avoided confirming this fact, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

However, if you find that the Defendant had an actual, good faith belief that the particular fact was true, he may not be convicted.

With respect to the conspiracy counts, you must also keep in mind that there is an important difference between intentionally participating in the conspiracy, on the one hand, and knowing the specific object of the conspiracy, on the other. You may consider conscious avoidance in deciding whether a Defendant knew the objective of a conspiracy, that is, whether a Defendant reasonably believed that there was a high probability that a goal of the conspiracy was to commit the crime charged as the object of that conspiracy and deliberately avoided confirming that fact, but participated in the conspiracy anyway. But conscious avoidance cannot be used as a substitute for finding that a Defendant intentionally joined the conspiracy in the first place. It is logically impossible for a Defendant to intend and agree to join a conspiracy if he does not actually know it exists, and that is the distinction I am drawing.

In sum, if you find that a particular Defendant believed there was a high probability that a fact was so and that the Defendant deliberately and consciously avoided learning the truth of that fact, you may find that the Defendant acted knowingly with respect to that fact. However, if you find that the Defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact.

Instruction No. ~~39~~40: Good Faith

As to each count, I have instructed you as to what state of mind the Government must prove each Defendant had to be guilty of that crime. You are to assess each Count and Defendant separately, and in each case review the instructions as to that specific Count.

Nevertheless, let me advise you that a Defendant's good faith is a complete defense to all of the charges in this case. If a Defendant believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were ultimately injured by his conduct (contrary to his intention), there would be no crime. The burden of establishing criminal intent and lack of good faith rests upon the Government. A Defendant is under no burden to prove his or her good faith; rather, as to each Count in the Indictment, the Government must prove bad faith as to each Defendant beyond a reasonable doubt.

Instruction No. ~~40~~41: Aiding and Abetting

In connection with the substantive crimes charged in Counts Two, Five, and Six, Yuri Lebedev is charged with committing certain criminal acts and also with aiding and abetting the commission of those acts. As to each of those counts, the Defendant can be convicted either if he committed the crime himself or if the Government proves beyond a reasonable doubt that he aided and abetted the commission of the crime by one or more other persons.

A person who aids and abets another ~~to commit~~in committing an offense is just as guilty of that offense as if he had committed it himself. Therefore, if you find that the Government has proven beyond a reasonable doubt that another person actually committed a crime with which Yuri Lebedev is charged in the Indictment, and proved that Yuri Lebedev aided and abetted that person in the commission of the offense, then you may find him guilty of that crime.

In order to convict on an aiding and abetting theory, you must first find that another person has committed the crime charged. Obviously, the Defendant cannot be convicted of aiding and abetting the criminal act of another if no crime was actually committed by the other person. In other words, if you find that no one committed the crimes listed in the Indictment under Counts Two, Five, and Six, then you cannot consider the possibility that the Defendant aided or abetted in the commission of any of those offenses. But if you do find that a crime was committed, then you must consider whether the Government has proved that the Defendant aided or abetted the commission of that crime.

In order to aid and abet another ~~to commit~~in committing a crime, it is necessary that the Government prove that the Defendant willfully and knowingly associated himself in some way with the crime, and that he willfully and knowingly sought by some act to help make the crime succeed. The intent necessary to support a conviction for aiding and abetting goes beyond mere knowledge by the Defendant that his action would tend to advance some nefarious purpose of the principal. Rather, the Government must prove that the Defendant engaged in some affirmative conduct or overt act for the specific purpose of bringing about the crime described in the Indictment.

In sum, to determine whether Yuri Lebedev aided and abetted the commission of the crime you are considering, the Government must prove that the Defendant: (1) participated in the crime charged as something he wished to bring about; (2) associated himself with the criminal venture knowingly, deliberately, and willfully; and (3) intended by his actions to make the criminal venture succeed. If the Government has proved these three things beyond a reasonable doubt, then the Defendant is an aider and abettor and guilty of the crime charged. If the Government's proof has failed to prove these three things, then the Defendant is not an aider and abettor and you must find him not guilty of the crime charged.

Instruction No. ~~41~~42: Venue

In addition to the foregoing elements I have described for you, it is also necessary for you to decide, as to each Count, whether any part of the offense reached within this District: the Southern District of New York. The Southern District of New York comprises the following counties: Manhattan, the Bronx, Westchester, Dutchess, Putnam, Rockland, Orange, and Sullivan. This is called "venue." Venue means place or location.

Venue must be examined separately for each count in the Indictment. Venue on one count does not establish venue on another count, though if applicable, you may rely on the same evidence to establish venue on multiple counts.

As to the conspiracy charges, the Government need not prove that any crime was completed in this District or that the Defendants or any of their co-conspirators were physically present here. Rather, venue is proper in this District if any of the Defendants or their co-conspirators caused any act or event to occur in this District in furtherance of the offense, and it was reasonably foreseeable to the Defendant that you are specifically considering that the act would take place in the Southern District of New York.

As to the substantive counts – that is, the non-conspiracy counts – the Government again need not prove that any crime was completed in this District or that the Defendant in question was physically present here. Rather, venue is proper in this District provided that any act in furtherance of the essential conduct of the crime took place in the Southern District of New York. Again, the Defendant you are considering need not have specifically intended to cause an act or event to happen in this District, or even known that he was causing an act or event to happen here, as long as it was reasonably foreseeable to that specific Defendant that such act would occur in this District and it in fact occurred.

On the issue of venue—and this alone—the Government need not prove venue beyond a reasonable doubt, but only by a mere preponderance of the evidence. A "preponderance of the evidence" means more likely than not. Thus, the Government, which does bear the burden of proving venue, has satisfied that burden as to venue if you conclude that it is more likely than not that some act or communication in furtherance of each charged offense occurred in the Southern District of New York, and it was reasonably foreseeable to each Defendant that the act would so occur. If, on the other hand, you find that the Government has failed to prove the venue requirement as to a particular offense, then you must acquit the Defendant of that offense, even if all other elements of the offense are proven.

Instruction No. ~~42~~43: Variance in Dates

The Indictment alleges that certain conduct occurred on or about various dates or during various time periods. It is not necessary, however, for the Government to prove that any conduct alleged occurred exactly on such dates or throughout any such time periods. As long as the conduct occurred around any dates or within any time periods the Indictment alleges it occurred, that is sufficient.

GENERAL INSTRUCTIONS

Instruction No. ~~43~~44: Direct and Circumstantial Evidence

I turn now to some general instructions. There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. One kind of direct evidence is a witness's testimony about something the witness knows by virtue of her or his own senses – something the witness has seen, felt, touched or heard. Direct evidence may also be in the form of exhibit.

The other type of evidence is circumstantial evidence. Circumstantial evidence is evidence that tends to prove one fact by proof of other facts. There is a simple example of circumstantial evidence that is often used in this courthouse.

Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that there are blinds on the courtroom windows that are drawn and that you cannot look outside. As you are sitting here, someone walks in with an umbrella that is dripping wet. Some else then walks in with a raincoat that is also dripping wet.

Now, you cannot look outside the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of the facts that I have asked you to assume, it would be reasonable and logical for you to conclude that between the time you arrived at the courthouse and the time these people walked in, it had started to rain.

That is all there is to circumstance evidence. You infer on the basis of reason and experience and common sense from an established fact the existence or nonexistence of some other fact.

Many facts, such as a person's state of mind, can only rarely be proved by direct evidence. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting the Defendant you, the jury, must be satisfied of the Defendant's ~~guilty~~guilt beyond a reasonable doubt from all the evidence in the case.

Instruction No. ~~44~~45: Inferences

During the trial, and as I give you these instructions, you have heard and will hear the term "inference." For instance, in their closing arguments, the attorneys have asked you to infer, based on your reason, experience, and common sense, from one or more established facts, the existence of some other fact. I have instructed you on circumstantial evidence and that it involves inferring a fact based on other facts, your reason, and common sense.

What is an "inference"? What does it mean to "infer" something? An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists based on another fact that you are satisfied exists.

There are times when different inferences may be drawn from facts, whether proven by direct or circumstantial evidence. The Government asks you to draw one set of inferences, while the Defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion that you, the jury, are permitted but not required to draw from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

Therefore, while you are considering the evidence presented to you, you may draw, from the facts that you find to be proven, such reasonable inferences as would be justified in light of your experience.

Some inferences, however, are impermissible. You may not infer that a Defendant is guilty of participating in criminal conduct if you find merely that he was present at the time the crime was being committed and had knowledge that it was being committed. Nor may you use evidence that I have instructed you was admitted for a limited purpose for any inference beyond that limited purpose.

In addition, you may not infer that a Defendant is guilty of participating in criminal conduct merely from the fact that he associated with other people who were guilty of wrongdoing or merely because he has or had knowledge of the wrongdoing of others.

Here again, let me remind you that, whether based upon direct or circumstantial evidence, or upon the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of each Defendant you are considering beyond a reasonable doubt before you may convict that defendant of any of the crimes charged.

Instruction No. ~~45~~46: Credibility of Witnesses

You have had the opportunity to observe the witnesses. It is your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of the witnesses. How do you evaluate the credibility or believability of the witnesses? The answer is that you use your common sense, judgment, and experience. Common sense is your greatest asset as a juror. You should ask yourselves, did the witness impress you as honest, open, and candid? Or did the witness appear evasive, as though the witness was trying to hide something? How responsive was the witness to the questions asked on direct examination and on cross-examination? Consider the witness's demeanor, manner of testifying, and accuracy of the witness's recollection. In addition, consider how well the witness recounted what was heard or observed, as the witness may be honest but mistaken.

If you find that a witness is intentionally telling a falsehood that is always a matter of importance that you should weigh carefully. If you find that any witness has lied under oath at this trial, you should view the testimony of such a witness cautiously and weigh it with great care. You may reject the entirety of the witness's testimony, part of it or none of it. It is for you to decide how much of a witness's testimony, if any, you wish to credit. A witness may be inaccurate, contradictory, or even untruthful in some respects and yet entirely believable and truthful in other respects. It is for you to determine whether such untruths or inconsistencies are significant or inconsequential, and whether to accept or reject all or to accept some and reject the balance of the testimony of any witness.

In evaluating credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care. This is not to suggest that any witness who has an interest in the outcome of a case would testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

You are not required to accept testimony even though the testimony is not contradicted and the witness's testimony is not challenged. You may decide because of the witness's bearing or demeanor, or because of the inherent improbability of the testimony, or for other reasons sufficient to yourselves that the testimony is not worthy of belief. On the other hand, you may find, because of a witness's bearing and demeanor and based upon your consideration of all the other evidence in the case, that the witness is truthful.

Thus, there is no magic formula by which you can evaluate testimony. You bring to this courtroom all your experience and common sense. You determine for yourselves in many circumstances the reliability of statements that are made by others to you and upon which you are asked to rely and act. You may use the same tests here that you use in your everyday lives. You may consider the interest of any witness in the outcome of this case and any bias or prejudice of any such witness, and this is true regardless of who called or questioned the witness.

Instruction No. 4647: Credibility of Witnesses: Impeachment by Prior Inconsistent Statement

You have heard evidence that a witness made a statement on an earlier occasion which counsel argues is inconsistent with the witness's trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence bearing on either Defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency,; and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all of the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness' witness's testimony.

Instruction No. 4748: Defendants' Right Not to Testify

One of the Defendants did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to a defendant. A defendant is never required to prove that he is innocent. You may not attach any significance to the fact that the DefendantsDefendant did not testify. No adverse inference against themhim may be drawn by you because theyhe did not take the witness stand. In addition, even if one Defendant testifies, no adverse inference may be considered against the other Defendant who did not testify. You may not consider this against the Defendants in any way in your deliberations.

Instruction No. 4849: Defendants' Testimony

A defendant in a criminal case never has any duty to testify or come forward with any evidence. This is because, as I have told you, the burden of proof beyond a reasonable doubt remains on the Government at all times, and the defendant is presumed innocent. In this case, however, a Defendant did testify and he was subject to cross-examination like any other witness. You should, therefore, examine and evaluate the Defendant's testimony just as you would the testimony of any other witness with an interest in the outcome of the case.

Instruction No. ~~49~~50: Law Enforcement Witnesses

You have heard the testimony of law enforcement agents. The fact that a witness may be employed as a law enforcement official by the United States Government or by a foreign government does not mean that his or her testimony deserves more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the ground that their testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement or Government employee witness, as it is with every other type of witness, and to give that testimony the weight that you find it deserves.

Instruction No. ~~50~~51: Accomplice/Cooperating Witness Testimony

You have heard from witnesses who testified that they committed certain of the crimes charged in the Indictment or other crimes. Some of these ~~witness~~witnesses have testified under the terms of a cooperation agreement or non-prosecution agreement. There has been a great deal said about these so-called cooperating witnesses in the summations of counsel and whether or not you should believe them. The law permits the use of testimony from such witnesses. Indeed, such testimony, if found truthful by~~,~~ you, may be sufficient in itself to warrant conviction if it convinces you of the Defendant's guilt beyond a reasonable doubt. However, the law requires that the testimony and motives of such witnesses be scrutinized with particular care and caution. After carefully scrutinizing the testimony of such a witness, you may give that testimony as little or as much weight as you deem appropriate. Cooperating witness testimony should be given such weight as it deserves in light of the facts and circumstances before you, taking into account the witness's demeanor, candor, the strength and accuracy of the witness's recollection, the witness's background, the extent to which the testimony is or is not corroborated by other evidence in the case, and the witness's personal interest in testifying.

I have given you some general considerations on credibility and I will not repeat them all here. Nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

In evaluating the testimony of a cooperating witness, you should ask yourselves whether the witness would benefit more by lying, or by telling the truth. Was the witness's testimony made up in any way because she believed or hoped that she would somehow receive favorable treatment by testifying falsely? Or did she believe that her interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which would cause her to lie, or was it one which would cause her to tell the truth? Did this motivation color her testimony?

As with any witness, if you find that the testimony was false, you should reject it. However, if, after a cautious and careful examination of the cooperating witness's testimony and demeanor upon the witness stand, you are satisfied that the witness told the truth, you should accept it as credible and give the testimony whatever consideration you think it deserves. As with any witness, the issue of credibility need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept his or her testimony in other parts, or may disregard all of it. That is a determination entirely for you, the jury.

Instruction No. ~~51~~52: Opinion of Defendant's Character

Defendant Trevon Gross has called witnesses who have given their opinion of the Defendant's character. This testimony is not to be taken by you as the witness's opinion as to whether the Defendant is guilty or not guilty. That question is for you alone to determine. You should, however, consider this character evidence together with all the other facts and all the other evidence in the case in determining whether the Defendant is guilty or not guilty of the charge. Character evidence may be considered by you in determining whether the Government has proven the Defendant's guilt beyond a reasonable doubt.

Accordingly, if after considering all the evidence, including testimony about the Defendant's good character, you should find a reasonable doubt has been created, you must acquit him of the charge.

On the other hand, if after considering all the evidence, including that of the Defendant's character, you are satisfied beyond a reasonable doubt that the Defendant is guilty, you should not acquit the Defendant merely because you believe him to be a person of good character.

Instruction No. ~~52~~53: Persons Not on Trial

You may not draw any inference, favorable or unfavorable, towards the Government or the Defendants, from the fact that certain persons were not tried as defendants in this case. The fact that these persons are not on trial here must play no part in your deliberations.

Instruction No. ~~53~~54: Uncalled Witnesses Equally Available

You have heard the names of several people during the course of the trial who did not appear here to testify and one or more of the attorneys may have referred to their absence. You should not draw any inferences or reach any conclusions as to what these persons would have testified to had they been called. Their absence should not affect your judgment in any way. Remember my instruction, however, that the law imposes no duty on the defendant in a criminal case to call any witnesses or produce any evidence.

Instruction No. 5455: Preparation of Witnesses

You have heard evidence during the trial that witnesses have discussed the facts of the case and their testimony with the Government lawyers, the defense lawyers, or their own lawyers before the witnesses appeared in court.

Although you may consider that fact when you are evaluating a witness's credibility, I instruct you that there is nothing either unusual or inherently improper about a witness meeting with the Government lawyers, the defense lawyers, or his or her own lawyers before testifying so that the witness can be aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultations.

Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

Instruction No. ~~55~~56: Investigative Techniques

You have heard reference through the questioning to the fact that certain investigative techniques were used or not used by the Government. There is no legal requirement, however, that the Government prove its case through any particular means. Your concern is to determine whether, on the evidence or lack of evidence, the Defendants' guilt has been proven beyond a reasonable doubt.

Instruction No. ~~56~~57: Use of Electronic Communications

Some of the evidence in this case has consisted of electronic communications seized from computers or electronic accounts. There is nothing illegal about the Government's use of such electronic communications in this case and you may consider them along with all the other evidence in the case. Whether you approve or disapprove of the seizure of these communications may not enter your deliberations.

You may, therefore, regardless of any personal opinions, consider this evidence along with all the other evidence in the case in determining whether the Government has proved beyond a reasonable doubt the guilt of the Defendants. However, as with the other evidence, it is for you to determine what weight, if any, to give such evidence.

Instruction No. ~~57~~58: Violation of NCUA Law or Regulations Not a Crime

During the trial, you heard evidence about certain provisions of the Federal Credit Union Act and National Credit Union Administration regulations, including those relating to field of membership, the duties and responsibilities of a credit union's board of directors, and reports that are submitted to the National Credit Union Administration.

I instruct you that a violation of any of these laws or regulations, should you find any to have occurred, is not a crime in and of itself. In other words, the Defendants are not charged with criminal violations of the Federal Credit Union Act or the National Credit Union Administration regulations, and you cannot find either Defendant guilty based solely upon a violation of the Federal Credit Union Act or the National Credit Union Administration regulations. You may, however, consider any evidence about any violations of the Federal Credit Union Act or National Credit Union Administration regulations as you would any other evidence in the case.

Instruction No. ~~58~~59: Use of Evidence From Searches

You have heard testimony about evidence seized in connection with certain searches conducted by law enforcement officers. Evidence obtained from these searches was properly admitted in this case, and may be properly considered by you. Such searches were appropriate law enforcement actions. Whether you approve or disapprove of how the evidence was obtained should not enter into your deliberations, because I instruct you that the Government's use of the evidence is entirely lawful. You must, therefore, regardless of your personal opinions, give this evidence full consideration along with all the other evidence in the case in determining whether the Government has proven each Defendant's guilt beyond a reasonable doubt. As with all evidence, it is for you to determine what weight, if any, to give such evidence.

Instruction No. ~~59~~60: Recordings/Transcripts

In connection with the recordings that were introduced into evidence during the trial, you were provided with transcripts of the conversations to assist you while listening to the recordings. I instructed you during the trial, and I remind you now, that the transcripts are not evidence. The transcripts were provided only as an aid to you in listening to the recordings. It is for you to decide whether the transcripts correctly present the conversations recorded on the recordings that you heard. If you wish to hear any of the recordings again, or see any of the transcripts, they will be made available to you during your deliberations.

Instruction No. ~~60~~61: Stipulations

You have heard some evidence in the form of what are called "stipulations." A stipulation of fact is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true.

A stipulation of testimony is an agreement among the parties that, if called, a witness would have given certain testimony. You must accept as true the fact that the witness would have given the testimony. However, it is for you to determine the effect or weight to give that testimony.

Instruction No. ~~61~~62: Summary Exhibits

Some of the exhibits presented in this case were charts, tables, or other forms of summary exhibits. These exhibits are not direct evidence. They are graphic representations or other ways of summarizing more voluminous information that was either described in the testimony of a witness or reflected in documents admitted into evidence. It is often easier and more convenient to use charts, tables, and summaries as opposed to placing all of the underlying documents in front of you. But it is up to you to decide whether the summary exhibits fairly and correctly reflect the underlying testimony and documents they purport to summarize. To the extent that the summary exhibits conform to your understanding of the underlying evidence, you may accept them. To the extent they do not, you should set them aside and rely on the underlying evidence instead. But one way or the other, realize that the summary exhibits are not in and of themselves direct evidence.

Instruction No. ~~62~~63: Excerpts and Redactions

Some of the exhibits admitted into evidence consist of excerpts of longer documents that were not admitted into evidence in their entirety. There is nothing unusual or improper about the use of such excerpts, and you are not to speculate from the use of such excerpts that any relevant portion of a document has been omitted.

Similarly, some of the exhibits admitted into evidence include redactions of certain information. Again, there is nothing unusual or improper about such redactions, and you are not to speculate from the use of such redactions that any relevant portion of a document has been removed.

Instruction No. ~~63~~64: Punishment

The question of possible punishment of the Defendants is of no concern to you, the members of the jury, and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court.

Your function is to weigh the evidence in the case and to determine whether or not the Government has proved that the Defendants are guilty beyond a reasonable doubt, solely upon the basis of such evidence.

Instruction No. 6465: Right to Hear Testimony; Election of Foreperson; Communications with the Court; Juror Note-Taking

You are about to go into the jury room and begin your deliberations. The documentary evidence will be sent back with you. If you want any of the testimony read to you, that can be arranged. But please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting portions of the testimony that you might want.

Your first task as a jury will be to choose your foreperson. The foreperson has no greater voice or authority than any other juror, but is the person who will communicate with the Court through written note when questions arise and to indicate when you have reached your verdict.

Your requests for testimony—in fact, any communications with the Court— should be made to me in writing, signed by your foreperson, and given to one of the Marshals. I will respond to any questions or requests you have as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. In any communication, please do not tell me or anyone else how the jury stands on the issue of the jury's verdict until after a unanimous verdict is reached.

For those of you who took notes during the course of the trial, you should not show your notes to or discuss your notes with any other juror during your deliberations. Any notes you have taken are to assist you and you alone. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror.

Finally, your notes are not to substitute for your recollection of the evidence in this case. If you have any doubt as to any testimony, you may request that the official trial transcript that has been made of these proceedings be read or otherwise provided to you.

Instruction No. ~~65~~66: CONCLUDING REMARKS

The most important part of this case, members of the jury, is the part that you as jurors are now about to play as you deliberate on the issues of fact. It is for you, and you alone, to weigh the evidence in this case and determine whether the Government has proved beyond a reasonable doubt each of the essential elements of the crime with which each Defendant is charged. If the Government has succeeded, your verdict should be guilty as to that Defendant and that charge; if it has failed, your verdict should be not guilty as to that Defendant and that charge.

You must base your verdict solely on the evidence or lack of evidence and these instructions as to the law, and you are obliged under your oath as jurors to follow the law as I have instructed you, whether you agree or disagree with the particular law in question.

Under your oath as jurors, you are not to be swayed by sympathy. You should be guided solely be the evidence presented during the trial and the law as I gave it to you, without regard to the consequences of your decision. You have been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your clear thinking, there is a risk that you will not arrive at a just verdict.

As you deliberate, please listen to the opinions of your fellow jurors, and ask for an opportunity to express your own views. Every juror should be heard. No one juror should hold center stage in the jury room and no one juror should control or monopolize the deliberations. If, after listening to your fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your honest convictions and beliefs solely because of the opinions of your fellow jurors or because you are outnumbered. Your final vote must reflect your conscientious belief as to how the issues should be decided.

Thus, the verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

If at any time you are divided, do not report how the vote stands, and if you have reached a verdict, do not report what it is until you are asked in open court.

Finally, I say this not because I think it is necessary, but because it is the custom in this courthouse to say this: You should treat each other with courtesy and respect during your deliberations.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors, and if you apply your own common sense, you will deliberate fairly.

Members of the jury, I ask your patience for a few minutes longer. It is necessary for me to spend a few moments with counsel and the reporter at the side bar. I will ask you to remain patiently in the jury box, without speaking to each other, and we will return in just a moment to submit the case to you. Thank you.

15-cr-769, U.S. v. Lebedev & Gross
Verdict Form, 3/8/17 To Parties

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA,

- v. -

YURI LEBEDEV and
TREVON GROSS,

Defendants.

- - - - - - - - - - - - - - - - - - - x

S6 15 Cr. 769 (AJN)

VERDICT FORM

COUNT One:

Yuri Lebedev Guilty _______ Not Guilty ______

Trevon Gross Guilty _______ Not Guilty ______

COUNT Two:

Yuri Lebedev Guilty _______ Not Guilty ______

COUNT Three:

Trevon Gross Guilty _______ Not Guilty ______

COUNT Four:

Yuri Lebedev Guilty _______ Not Guilty ______

COUNT Five:

Yuri Lebedev Guilty _______ Not Guilty ______

COUNT Six:

Yuri Lebedev Guilty ________ Not Guilty _______

Dated: New York, New York
March ____, 2017

____
Signature of Foreperson

____
Print Name